IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 38909 of 2015 (K)

PETITIONER(S) :

M/S. PARLE AGRO PVT. LTD.,
5/188 MEPPARAMBA PIRAYIRI P.O., PALAKKAD
HAVING ITS CORPORATE OFFICE AT OFF WESTERN
EXPRESS HIGHWAY, SAHAR-CHAKALA ROAD, PARSIWADA,
ANDHERI (E), MUMBAI- 400 099,
REPRESENTED BY ITS ASSISTANT VICE PRESIDENT TAXATION
KRISHNAN SESHADRI.

BY SRI. ARSHAD HIDAYATHULLAH (SENIOR ADVOCATE)
ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT(S) :

----

1. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, WALAYAR- 678 624.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWERS KARAMANAM, THIRUVANANTHAPURAM- 695 002.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 38909 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :
--

EXHIBIT P1: **A TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47(2) DATED 22.07.2015.**

EXHIBIT P2: **A TRUE COPY OF THE RECEIPT NO.75601 DATED 24.07.2015.**

EXHIBIT P3: **A TRUE COPY OF THE REPRESENTATION DATED 14.12.2015 MADE BY THE PETITIONER TO THE SECOND RESPONDENT.**

EXHIBIT P4: **A TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47(2) DATED 17.12.2015 ISSUED BY THE SECOND RESPONDENT.**

EXHIBIT P5: **A TRUE COPY OF THE RELEASE ORDER DATED 17.12.2015 ISSUED BY THE SECOND RESPONDENT.**

RESPONDENT(S)' EXHIBITS :
--

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

-- -- -- -- -- -- -- -- -- -- -- -- --

W.P.(C)No.38909 of 2015

-- -- -- -- -- -- -- -- -- -- -- -- --

Dated this the 22nd day of December 2015

JUDGMENT

A consignment of soft drinks, that was being transported at the instance of the petitioner was detained by the respondents. Ext.P1 is the detention notice. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle. Although the petitioner has paid the amount demanded as security deposit under protest in the instant case, the apprehension is with regard to continued detention of subsequent consignments citing the same reason.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P1 notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item for the purposes of tax. While the petitioner had declared the goods as taxable @ 14.5%, it is the case of the respondents that the goods are taxable @ 20%. The learned senior counsel appearing for the petitioner would submit that the clarification order, that was passed by the authority for clarification suggesting a classification that would attract tax @ 20%, has been stayed by a Division Bench of this Court. It is further pointed out that the petitioner is a registered dealer within the State. Taking note of the said submission and finding that the security deposit demanded in Ext.P1 has already been paid by the petitioner and the apprehension is only with regard to continued detention by the respondents of the goods on the ground of mis-classification, I direct that transportation of the commodity “Appy Fizz”, manufactured by the petitioner shall not be detained by the respondents, during the pendency of the stay granted by this court in OTA 7/2015, and solely on the ground of mis-classification of the goods. The 2nd respondent shall take note of the judgment in this case and issue suitable instructions to the Commercial Tax Check post officers / Intelligence department of the State, so as to ensure that the goods - “Appy Fizz” manufactured by the petitioner are not detained at the check post, solely on the ground of alleged misclassification.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/