IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 29TH DAY OF DECEMBER 2015/8TH POUSHA, 1937

WP(C).No. 40015 of 2015 (B)

PETITIONER:

NACHSH TRADING COMPANY AGED 44 YEARS
DOOR NO. 27/1026, G-289, FIRST FLOOR
MAIN AVENUE, PANAMPILLY NAGAR, ERNAKULAM - 682 036
REPRESENTED BY MR. SHEEBA SUFFERULLAH, PARTNER.

BY ADVS.SRI.JOSEPH JERARD SAMSON RODRIGUES
SRI.ROVIN RODRIGUES

RESPONDENT:

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, GOPALAPURAM
PALAKKAD DISTRICT - 678 555.

BY GOVERNMENT PLEADER SRI SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 40015 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

P1-	TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER
P2-	TRUE COPY OF THE TAX INVOICE NO. NTC 6414-15 DATED 23/12/2015 FOR RS.5,33,175/- ISSUED BY THE PETITIONER
P3-	TRUE COPY OF THE DELIVERY NOTE IN FORM NO. 15 BEARING SL. NO. 320711/DN/36433/2015 DATED 23/12/2015 FOR RS.5,33,715/- ISSUED BY THE PETITIONER
P4-	TRUE COPY OF THE NOTICE NO. OR 1452/2015-16 DATED 24/12/2015 ISSUED BY THE RESPONDENT COMMERCIAL TAX INSPECTOR.
P5-	TRUE COPY OF THE REPLY/OBJECTION LETTER DATED 24/12/2015 FILED BEFORE THE RESPONDENT COMMERCIAL TAX INSPECTOR.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C.)No.40015 Of 2015

DATED THIS THE 29th DAY OF DECEMBER, 2015

JUDGMENT

The petitioner, who is a registered dealer under the KVAT Act has consigned 14950 Kilograms of wet dates on the strength of Ext.P2 tax invoice and Ext.P3 delivery note issued in favour of M/s Aruna Traders at Virudhnagar at Tamil Nadu. On 24.12.2015, the vehicle was intercepted by the respondent at Gopalapuram Check Post and the petitioner was issued with Ext.P4 notice under Section 47(2) of the KVAT Act, directing the petitioner to remit a security deposit of ₹1,12,700/-, after estimating the value of the goods at ₹11,27,000/-.

2. It is aggrieved by the aforesaid detention notice, the petitioner is before this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P4 detention notice and a writ of mandamus commanding the respondent to release the goods and the vehicle without collecting any security deposit.

3. I heard arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader

appearing for the respondents.

4. From the pleadings and materials on record, it is seen that the vehicle in question was intercepted at Gopalapuram Check Post on 24.12.2015 and the petitioner was issued with Ext.P4 notice under Section 47(2) of the KVAT Act demanding security deposit of ₹1,12,700/-. The defects noted by the respondent in Ext.P4 are as follows:

> "(1) The declared quantity of the goods is 14950 instead of the actual quantity of the goods as per weighing slip taken from weigh bridge working @ CTCP Gopalapuram and as follows:
>
> > Gross weight 25180 Kg. Tare weight 9000 KG, Net weight 16180Kg. Therefore an excess quantity of 1230 Kg wet dates found in the vehicle. Hence, the accompanied documents has no nexus with the actual goods under transportation.
>
> (2) The value of the goods declared per kilogram is Rupees 35.70 (Thirty five rupees and 70 paise only). It is very low compared to the prevailing market rate.
>
> (3) On further verification of the goods it is found that it is good quality and have a reasonable market value of above ₹70/- per Kilogram.
>
> (4) The declared rate value is very low compared with

> the purchase value of the same. Quality of wet dates declared in this Check Post of various dealers i.e., ₹47/- per Kg as per Invoice No.1324 dated 21/12/15. When by adding freight and GP. then the rate value arrive @ the rate of ₹70/- per Kilogram."

On verification of the documents produced, the respondent suspected an attempt on the part of the petitioner to evade payment of tax under the KVAT Act. Hence Ext,P4 notice was issued demanding security deposit of ₹1,12,700/- in lieu of detention. Though the petitioner has raised various contentions in this Writ Petition, adjudication of the aforesaid contentions is not warranted at this stage. Against Ext.P4 detention notice, the petitioner has already submitted Ext.P5 objection raising similar contentions, which has to be considered by the appropriate authority.

In such circumstances, this Writ Petition is disposed of with the following directions:

(i) On the petitioner depositing 25% of the security deposit demanded in Ext.P4 and furnishing a simple bond without surety for the remaining sum, the respondent shall release the goods and vehicle in question.

(ii) Thereafter, the respondent shall forward the file to the adjudicating authority, who shall adjudicate the matter and pass appropriate orders within a period of two months, with notice to the petitioner.

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge