(2012) 07 KL CK 0252

In the High Court Of Kerala

Case No : WP (C) .No. 17066 of 2012 (G)

Dr. K. Abdul Rahman, C/o. Savera Hospital APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 47(2)

Citation : (2012) 07 KL CK 0252

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : C.A. Sadasivan, Sri. Joy P. Jose, Sri. Jojan Mathew, Sri. K.N. Krishnan Namboothiri, Sri. C.V. Sasi Sri. K. Jayamohanan Pillai, for the Appellant; Shoba Annamma Eapen, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner is running an institution in the field of diagnosis, in the name and style of " Modern Diagnostics Health Check-up Centre", which in fact a ''lab testing unit'', allegedly competent to issue health certificates to the candidates, who are selected for job abroad. Pursuant to Ext. P1 purchase order for supply of an equipment to cater to the requirements of the petitioner, the consignor sold the said equipment as per Ext. P4 purchase invoice dated 1/6/2012 and it was being transported on the strength of Ext. P3 ownership certificate in Form 16. In the course of transit, the goods were intercepted by the second respondent issuing Ext. P5 notice u/s 47(2) of the KVAT Act, doubting evasion of tax and demanding security deposit, which made the petitioner to approach this Court for immediate interference. The incriminating circumstances noted in Ext. P5 are as given below:

(i) the consignee is not a registered dealer under KVAT Act, 2003.

(ii) the tax payers Identification Number of the dealer is not seen noted in the invoice.

(iii) the consignment is declared for own use of the consignee. But it is suspected that the consignment is for the commercial purpose. The Diagnostic services are usually charged a service charge, hence it is a commercial use and

(iv) the consignee is liable to take registration under Kerala Value Added Act Act, but no proof of such registration is accompanied along with the consignment.

The learned counsel for the petitioner submits that the petitioner is very much entitled to run his lab unit, for which he is also entitled to have the purchase effected from outside the state. It was accordingly that the equipment was purchased satisfying the CST at the prescribed rate and not at the concessional rate and this being the position, there is no rationale on the part of the second respondent for having detained the goods. The apprehension expressed is stated as quite wrong and uncounted. The learned counsel also submits that the law does not make it obligatory for the petitioner to take out registration for pursuing the nature of operation being conducted by the petitioner.

2. The learned Government Pleader however submits on instructions that, nothing is discernible from Ext. P4 invoice as to the Ext. P1 ''purchase order'' stated as given by the petitioner. But this Court finds that the name of the petitioner''s establishment is very much given in Ext. P4 invoice, though no reference is made to the purchase order, which is produced as Ext. P1 before this Court. That apart, the law does not specify that, for effecting sale, there has necessarily to be a purchase order bearing any specific number or date or such other particulars, which if produced can only be a contributing factor or evidence to be looked into and weighed as one of the different links to form a chain. On going through the materials on record, this Court finds that, the main objection is as to the absence of registration for the petitioner/consignee, which prima facie does not appear to be correct. But, whether there was any intent on the part of the petitioner to evade tax or whether the petitioner was pursuing any dubious exercise or transaction, is a matter to be verified and ascertained in the course of adjudication proceedings. But, for that matter, the goods need not be detained any further and it shall be released to the petitioner on executing a ''simple bond'' without sureties. The submission made by the learned counsel for the petitioner that the petitioner is ready and willing to co-operate with the adjudication proceedings is recorded and the writ petition is disposed of, without prejudice to the rights and liberties of the respondents to pursue adjudication proceedings, in accordance with law, as expeditiously as possible.

