(2012) 08 KL CK 0197

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 19835 of 2012 (D)

M/s. Mirc Electronic Limited — APPELLANT

Vs

Inspecting Assistant Commissioner Department of Commercial Taxes (Intelligence) Squad No. VIII Thevara 682015 — RESPONDENT

Date of Decision : 22-08-2012

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

Citation : (2012) 08 KL CK 0197

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

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; Sobha Annamma Eapen, Government Pleader, for the Respondent

Judgement

P.R. Ramachandra Menon, J.

APPENDIX

PETITIONERS EXHIBITS

P1

Copy of The Stock Transfer Cum Delivery Challan Dated 7-8-2012

P2

Copy of The Notice Dated 10-8-2012

P3

Copy of The Reply Furnished By The Petitioner Dated 13-8-2012

RESPONDENTS EXHIBITS

NIL

1. The goods transported by the petitioner through a courier have been detained by issuing Ext.P2 notice u/s 47(2) of the KVAT Act, doubting evasion of tax and demanding security deposit to the extent as specified therein, which made the petitioner to approach this Court. The case of the petitioner as projected in the writ petition is that, the goods, particularly T.V. sets, were entrusted to be transported on the strength of valid documents and the understanding was to have it transported by road. But without any information or consent, the courier transported the goods by ''Rail'' and thereafter by road. It was in the course of transit as above, that they were intercepted issuing Ext.P2 notice. Despite filing Ext.P3 reply explaining the position, the goods stand off-loaded by the courier on the instruction of the departmental authorities and it has not been, which is sought to be intercepted in this writ petition. Heard the learned Government Pleader as well.

2. Going by the pleadings and proceedings, the petitioner accuses the courier with regard to the course of action pursued, which allegedly is without any knowledge of the petitioner and hence contending that there is not ''mens rea'' at all. However, whether there was any actual intent to evade the tax in any manner is a matter to be adjudicated in the course of appropriate proceedings. But, for that reason, the goods need not be detained any further and the same shall be released to the petitioner forthwith, on satisfying 50% of amount demanded in Ext.P2 and on executing a ''simple bond'' without sureties for the balance amount. This shall be without prejudice to the rights and liberties of the respondents to proceed with the adjudication proceedings, which shall be completed in accordance with the relevant provisions of law, as expeditiously as possible.

Writ petition is disposed of.