(2012) 08 KL CK 0252

In the High Court Of Kerala

Case No : Writ Petition (C) . 19851 of 2012 (F)

Quilon Super Speciality Hospital and Institute Pvt. Ltd. APPELLANT

Vs

The Intelligence Inspector, Squad No. IV, Dept. of Commercial Taxes, Mattancherry at Aluva - 683101, The Intelligence Officer, Squad No. 1, Dept. of Commercial Taxes, Kollam - 691009, The Deputy Commissioner (Appeals), Department of Commercial Taxes, Kollam - 691012 and The Manager, Federal Bank Limited, Near Iron Bridge, Kollam - 691013 RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

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

Citation : (2012) 08 KL CK 0252

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

Bench : Single Bench

Advocate : Joseph Jerard Samson Rodrigues and Sri. Rovin Rodrigues, for the Appellant; Shoba Annamma Eapen Sr. Government Pleader for R1 to R3, for the Respondent

Judgement

P.R. Ramachandra Menon, J.

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P-1

True Copy of The Purchase Order No.P.O.10-11-0693 Dated 03.02.2011

EXT.P-2

True Copy of The Tax Invoice No.950126071 Dated 19.04.2011

EXT.P-3

True Copy of The Revised Notice No.OR 287/11-12 Dated 05.05.2011

EXT.P-4

True Copy of The Objection Letter Dated 11.05.11

EXT.P-5

True Copy of The Judgement In WPC No.15210 of 2011 Dated 15.06.2011

EXT.P6(a)

True Copy of The Bank Guarantee In Form 6C

EXT.P6(b)

True Copy of The Security Bond Dated 10.06.11

EXT.P-7

True Copy of The Penalty Order No.OR-454/11-12 Dated 29.03.2012.

EXT.P-8

True Copy of The Letter No.OR/454/11-12 Dated 31.05.2012 Invoking The Bank Guarantee.

EXT.P9(a)

True Copy of The Appeal Filed Before The Dy.Commissioner (Appeals) Kollam.

EXT.P9(b)

True Copy of The Stay Petition Filed Before The Dy.Commissioner (Appeals), Kollam.

EXT.P-10

True Copy of The Judgement in WPC No.13378 of 2012 Dated 08.06.2012

EXT.P-11

True Copy of The Bank Guarantee No.IBG33623 Dated 12.06.2012 For Rs.1152228/-

EXT.P-12

True Copy of The Letter No.OR-454/11-12 Dated 15.06.2012 of The Intelligence officer, Kollam.

EXT.P-13

True Copy of The Order No. KVATA-465/12 Dated 17.07.2012 of The Deputy Commissioner (Appeals), Kollam.

EXT.P-14

True Copy of The Letter Dated 14.08.2012 To The Intelligence officer Squad No.I, Kollam.

RESPONDENTS'' EXHIBITS

NIL

1. The goods transported by the petitioner were intercepted in the course of transit issuing notice u/s 47(2) of the KVAT Act doubting evasion of tax and demanding security deposit as specified therein, which made the petitioner to approach this Court by filing this W.P.(C). No. 15210/2011, culminating in Ext.P5 judgment. The goods were in fact released on furnishing Bank Guarantee and the adjudication proceedings were ordered to be finalized as specified therein. Pursuant to the above verdict, the adjudication proceedings were finalized as per Ext.P7 order dated 29.03.2012, which was challenged in appeal along with an I.A. for stay as borne by Ext.P9(b). Because of the coercive proceedings, the petitioner was constrained to approach this Court again by filing W.P.(C). No. 13378/2012 which was disposed as per Ext.P10 judgment dated 08.06.2012 whereby, the I.A. for stay was directed to be considered by the appellate authority, simultaneously intercepting the coercive proceedings till such time. The operative portion of the said verdict reads as follows:

Considering the facts and circumstances, the third respondent is directed to consider and pass appropriate orders on Ext.P9(b) petition for stay, in accordance with law, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment. Further coercive proceedings shall be kept in abeyance till such time. Since the petitioner has complied with the direction given by this Court in the earlier round of litigation, implementation of Ext.P8 communication encashing bank guarantee shall be kept in abeyance, till orders are passed by the third respondent on Ext.P9(b) as aforesaid. It is also made clear that, if the same has already been honoured by issuing demand draft or banker''s cheque, the same shall be held back for the time being, subject to the condition that the petitioner furnishes bank guarantee for the full amount covered by Ext.P7 order forthwith.

2. The Learned Counsel for the petitioner submits that the petitioner has furnished ''Bank Guarantee'' for the full amount as borne by Ext.P11 (for a sum of Rs. 11,52,228/-) and this being the position, the DD No. 616275 dated 07.06.2012 for the sum of Rs. 5,76,114/-(Rupees five lakhs seventy six thousand one hundred and fourteen) already furnished by the petitioner is liable to be returned to the petitioner. As per Ext.P12, the petitioner has been let known that, in view of the Bank Guarantee for the full amount, the DD furnished by the petitioner has been returned to the Bankers, instructing to keep it in tact, as a result of which the due amount has not been credited to the account of the petitioner. The Learned Counsel also submits that, pursuant to Ext.P10 judgment passed by this Court the I.A. for stay was considered and Ext.P13 order has been passed, granting full stay, in view of the Bank Guarantee furnished by the petitioner for the entire amount.

3. Heard the learned Government Pleader as well. Considering the facts and

circumstances and in view of furnishing of Bank Guarantee for the full amount of Rs. 11,52,228/-(Rupees eleven lakhs fifty two thousand two hundred and twenty eight), which has been taken note by the appellate authority while granting Ext.P13 order of stay, there is no point in keeping the DD No. 616275 dated 07.06.2012 for the sum of Rs. 5,76,114/-(Rupees five lakhs seventy six thousand one hundred and fourteen) any further, during the pendency of appeal proceedings. In the said circumstance, this Court declares that DD which is now stated as returned to the fourth respondent Bank is entitled to be credited to the account of the petitioner. It is ordered accordingly. The third respondent/ appellate authority is directed to finalize Ext.P9(a) appeal in accordance with law, as expeditiously as possible.

Writ petition is disposed of.

