(2012) 07 KL CK 0312

In the High Court Of Kerala

Case No : WP (C) . No. 15865 of 2012 (G)

Shihab A.M, AMS Traders, Kandathara, Allapra, Perumbavoor APPELLANT

Vs

Intelligence Inspector, Commercial Taxes, Mattancherry, Camp At Aluva Mini Civil Station, Aluva- 683 101 RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 47(2), 69(1)

Citation : (2012) 07 KL CK 0312

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

Bench : Single Bench

Advocate : N. Muraleedharan Nair, Sri. V.K. Shamusudheen and Smt. K. Hymavathy, for the Appellant; Shoba Annamma Eapen Sr. Govt. Pleader, for the Respondent

Judgement

Justice P.R. Ramachandra Menon

1. The petitioner is a manufacturer and registered dealer under the KVAT Act sought to transport ''plywoods'' in the lorry bearing No.TN 21 E 7428. When the vehicle was proceeding along Pattal -Perumbavoor-Kothamangalam route, it was intercepted by the respondent on 04.07.2012 (wrongly shown as 07.04.2012), and issued Ext.P5 notice u/s 47(2) of the KVAT Act doubting evasion of tax and demanding security deposit to an extent of Rs. 54,000/-(Rupees fifty four thousand). The respondent also issued Ext.P6 notice u/s 69(1) of the very same enactment, demanding an equal amount, in view of the existence of circumstances as contemplated therein. This is under challenge in this writ petition, preferred by the petitioner- consignor. The learned counsel for the petitioner submits that the observation of the respondent that the transportation was without any document is not correct or proper, as the petitioner had in fact satisfied advance tax in respect of the goods carried in the vehicle as borne by Ext.P4, wherein the number of the particular vehicle was also shown. The learned counsel also submits that the goods were actually sold to the consignee,

whose particulars are given in Ext.P2 invoice and there was Ext.P3 delivery note as well. The said documents, however were not accepted by the respondents at the time of interception, which made the petitioner to approach this Court.

2. Heard the learned Government Pleader as well, who submits on instruction, that the pleadings and proceedings, particularly the contents of Ext.P2 showing the destination of the consignee do not reconcile with the actual facts and figures, more so, when the vehicle was intercepted when it was proceeding along the route Pattal -Perumbavoor-Kothamangalam.

3. The explanation offered by the petitioner in the writ petition is that, the vehicle was actually proceeding in the correct direction, but happened to miss the way and on realizing the mistake, the vehicle took a U-turn and came back, when the interception was made by the respondent issuing Ext.P5.

4. After hearing both the sides and on going through the materials on record, this Court observes that, at the time of interception, the respondent was not in a position to assess the nature of transaction, for the fact that the particulars of the consignor or consignee were not discernible and no document was there as noted in Ext.P5 itself; of which, column Nos. 6, 7, 9 and 12 are left blank.

5. There is also contention for the petitioner that Ext.P6, though is styled as a notice u/s 69(1), it in fact is an order. The learned Government Pleader submits that the usage of the expression need not be of any apprehension to the petitioner, more so when Ext.P6 itself describes it as a notice u/s 69(1) of the KVAT Act. What is contemplated under the said provision is discernible from the relevant provision of law itself and as such, it can only be regarded as a notice. The petitioner contends that the petitioner was compelled to challenge the said proceeding as given in paragraph ''4'' of the writ petition pointing out that since the owner of the vehicle is not related to the transport of goods, the petitioner, being the consignor, has approached this Court for appropriate relief. After hearing both the sides, this Court finds that, whether the explanation offered by the petitioner is tenable or not is a matter to be considered and decided in the course of adjudication proceedings. But, for that reason, the goods need not be detained, since the petitioner himself has come forward before this Court also in response to Ext.P6 notice u/s 69(1) of the KVAT Act. The goods and the vehicle shall be released to the petitioner forthwith, on satisfaction of the security demanded vide Ext.P5 and the amount sought to be realized by Ext.P6 either in cash or by furnishing a Bank Guarantee for the requisite amount. This shall be without prejudice to the rights and liberties of the competent authority to pursue the adjudication proceedings which shall be finalized in accordance with the relevant provisions of law as expeditiously as possible. All contentions are left open

Writ petition is disposed of.