(2012) 08 KL CK 0102

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 19283 of 2012 (I)

Sobha Developers Ltd. APPELLANT

Vs

Commercial Tax Inspector, Commercial Tax Check-Post, Walayar, Palakkad Ditrict-678624 and Commercial Tax Officer (Works Contract), Peroorkada, Thiruvananthapuram-695 005 RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 46(3), 47(2)

Citation : (2012) 08 KL CK 0102

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

Bench : Single Bench

Advocate : S. Anil Kumar Trivandrum, Sri. K.S. Hariharan Nair and Sri. K. Umamaheswar, for the Appellant; Shoba Annamma Eapen, Sr. Government Pleader for R1 and R2, for the Respondent

Judgement

Justice P.R. Ramachandra Menon

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1.

Copy of Certificate of Registration.

EXHIBIT-P2.

Copy of Annual Return for 2010-2011.

EXHIBIT-P3(a).

Copy Of Delivery Chalan Dated 10.7.2012.

EXHIBIT-P3(b).

Copy Of E-Sugam Declaration Dated 10.7.2012.

EXHIBIT-P4.

Copy of Notice Dated 14.07.2012 Issued by The 1st Respondent.

EXHIBIT-P5.

Copy of Reply Dated 15.07.2012.

EXHIBIT-P6.

Copy of Reply Dated 23.07.2012.

RESPONDENTS'' EXHIBITS:

NIL

1. The petitioner is a registered dealer under the KVAT Act and CST Act and is pursuing the ''works contract'' on the rolls of the second respondent as borne by Ext.P1 ''Certificate of Registration''. In connection with the business operation of the petitioner, the petitioner caused to effect transportation of some goods by way of ''stock transfer'' from the head office at Bangalore to the site at Thrissur and the said goods were being transported in the vehicle bearing No. KL 07 AW 4428 on the strength of necessary documents envisaged u/s 46(3) of the KVAT Act. It was in the course of transit as above, that the interception was made by the 1st respondent issuing Ext.P4 notice u/s 47(2) of the KVAT Act doubting evasion of tax and demanding security deposit as specified therein. Met with the situation, the petitioner has preferred Exts.P5 and P6 replies, which however did not yield any positive result and hence is under challenge before this Court. When the matter came up for consideration before this Court on the last occasion, it was submitted by the Learned Counsel for the petitioner that the goods were accompanied by valid documents as covered by Section 46(3) of the KVAT Act particularly, Ext.P3(b) which was sought to be rebutted by the learned Government Pleader appearing for the respondents. After getting necessary instructions, the learned Government Pleader submits that Ext.P3(b) was never there, along with the goods in transit; which in fact was supported only by Ext.P3(a) delivery challan.

2. After hearing both the sides, this Court finds that, it is open for the concerned authorities to elicit the true state of affairs as to whether there was any attempt to evade the tax in any manner; by way of adjudication proceedings. But, for that reason, the goods need not be detained any further. It shall be released to the petitioner forthwith, on satisfying 50% of amount demanded in Ext.P4 and on executing a ''simple bond'' for the balance amount without sureties. 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.

Writ petition is disposed of.

