(2010) 08 KL CK 0229

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23966 of 2010 (U)

Spaniso Studio APPELLANT

Vs

The Intelligence Officer and The Commercial Tax Officer RESPONDENT

Date of Decision : 03-08-2010

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

Citation : (2010) 08 KL CK 0229

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

Bench : Single Bench

Advocate : K.J. Abraham, for the Appellant; No Appearance, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner is before this Court challenging the sustainability of Ext.P8 notice issued u/s 47(2) of the KVAT Act, whereby the goods transported by the petitioner in the vehicle bearing No. KL070 8370 were detained by the respondents, doubting evasion of tax and demanding security deposit to the extent as specified therein.

2. The learned Counsel for the petitioner submits that, the petitioner is a law-abiding citizen, mainly having the field of operation at Calicut and the goods were actually imported at Cochin Port, from where it was being taken to the destination in Kottayam District, when the interception was made at Puthiyakavu near Thripunithura. The learned Counsel submits that, the petitioner has paid advance tax on 26.7.2010 itself, the date on which Ext. P1 invoice was raised and there occurred some delay at the hands of the authorities and the petitioner could take the goods only on 28.7.2010, the same having been cleared by the concerned authorities as borne by the endorsement on Ext. P7 made by the second respondent. It was accordingly, that the vehicle was proceeding to Kottayam, when it was intercepted on next day, in the early hours of 29.7.2010 at about 1.20 A.M. The learned Counsel further submits that, there is absolutely no rhyme or reason for having doubted the transaction, since the records have been prepared with specific reference to the container number, as reflected in

Ext. P4 bills of entry, Ext. P5 invoice as well as in Ext. P6. It is also brought to the notice of this Court, with reference to Ext. P2, that the petitioner has already satisfied a sum of Rs. 34,42,650/- as ''advance tax'' and this being the position, it is contended that the detention is without any justification.

3. The learned Government Pleader, with reference to the materials on record, submits that, the factual position as to Ext. P5 invoice raised by the petitioner on 26.7.2010 and that the goods were intercepted at Puthiyakavu only on 29.7.2010 stands rather conceded. The learned Government Pleader submits that, the time required to transport the goods from Willington Island to Puthiyakavu is nearly = to 1 hour and this being the position, it hence can only be in connection with the course pursued by the petitioner involving ''subsequent repeated transport'', on the strength of the same documents.

4. Considering the facts and circumstances, this Court finds that this is a matter which requires proper adjudication to ascertain the true state of affairs. However, this Court does not find it necessary to detain the goods for that reason and the same shall be released to the petitioner, on condition that, the petitioner satisfies 50% of the liability shown as security deposit in Ext.P8, either in the form of ''cash'' or ''bank guarantee'' and executes a ''simple bond'' for the balance amount. This will be without prejudice to the rights and interests of the respondents to pursue adjudication proceedings, if any and the same shall be finalized in accordance with law, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of the judgment.

The Writ Petition is disposed of.