(2014) 11 KL CK 0123

In the High Court Of Kerala

Case No : WP (C). No. 4660 of 2010 (F)

Sree Vinayaka Feeds — APPELLANT

Vs

The Intelligence Officer — RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Value Added Tax Act, 2003 — Section 47(2)

Citation : (2014) 11 KL CK 0123

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K.J. Abraham, Advocate for the Appellant; K.T. Lilly, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a registered dealer dealing in live chicken, poultry, cattle feed etc. During the transportation of a consignment of live chicken to an unregistered dealer in Pathanamthitta, the vehicle carrying the consignment of live chicken was detained by the Intelligence Officer, Squad No. II, Pathanamthitta at Thiruvalla by Ext. P4 notice. Ext. P4 notice was issued to the consignee of the goods and a perusal of it shows that the reason for detention was that the documents accompanying the goods indicated that the consignee was not a registered dealer under the Kerala Value Added Tax Act (hereinafter referred to as ''the KVAT Act'' for short) and further that he was a wholesale dealer in live chicken. The Intelligence Officer, therefore, suspected an attempt at evasion of tax. Thereafter, on noticing that the goods were perishable items, the consignee was asked to furnish security deposit within two hours. It is the case of the petitioner that, in response to Ext. P4 notice served on the consignee of the goods, the petitioner submitted Ext. P5 reply to the Intelligence Officer. By the time Ext. P5 was received by the Intelligence Officer, however, the consignment of live chicken that was transported had already been sold by the Intelligence Officer for realization of the security amount that was demanded from the consignee. The petitioner would submit that thereafter, he submitted

Ext. P6 representation pointing out to the Intelligence Officer that he was the actual owner of the goods and that the ownership in the goods had not passed to the consignee and therefore, the proceedings initiated against the consignee were not valid. It was also pointed out that the allegations in the notice issued to the consignee were also factually incorrect and there was no violation of any of the provisions of the KVAT Act justifying the detention of the goods while in transit. In the writ petition, the petitioner prays for quashing Ext. P4 notice as also for release of the vehicle and the payment of the cost of live chicken sold by the respondent to the petitioner.

2. A counter affidavit has been filed on behalf of the respondent wherein it is stated that the proceedings in Ext. P4 notice was against the consignee of the goods in terms of Section 47(2) of the KVAT Act under which provision, the respondent could proceed against the owner of the goods. It is pointed out that insofar as no notice was issued to the petitioner, he could not challenge the same in proceedings under Article 226 of the Constitution of India. It is also pointed out that, pursuant to an interim order of this Court dated 24.02.2010, the vehicle that was detained was released to the petitioner. As far as the goods are concerned, it is pointed out that the goods were subsequently sold and the amount realized through the sale of the goods has been kept with the respondent pending adjudication of the issue.

3. I have heard Sri. Abraham K.J., the learned counsel appearing on behalf of the petitioner as also Smt. K.T. Lilly, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that insofar as Ext. P4 notice, as also the subsequent proceedings initiated, were against the consignee of the goods and not the petitioner, the petitioner cannot impugn the same in proceedings under Article 226 of the Constitution of India. That apart, the petitioner has not been able to establish through any documents that he continued to be the owner of the goods for the purposes of impugning Ext. P4 notice in these proceedings. I note that by virtue of an interim order, the vehicle belonging to the petitioner, which was used for transportation of the goods has since been released to him. His contention now is with regard to the sale proceeds of the consignment of live chicken, that was sold by respondent on account of it being perishable goods. Considering the submission now made by counsel for the petitioner, with regard to the ownership of the goods in question, I deem it sufficient that, in the adjudication proceedings before the respondent, if not already concluded, the petitioner also be given an opportunity to put forth his contention regarding the ownership of the goods and to produce material to substantiate his contention regarding compliance with the procedure prescribed under the KVAT Act. The respondent shall pass orders in the matter, after hearing the petitioner as well as the consignee shown in Ext. P4 notice, within a period of two months from the date of receipt of a copy of this judgment.

Subject to the aforesaid direction, the writ petition is dismissed.