

(2013) 05 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No. 686 of 2013

Sunny Diamonds (Pvt.) Ltd.

APPELLANT

Vs

Commercial Tax Inspector

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Value Added Tax Act, 2003 — Section 47(2)

Citation : (2013) 3 ILR (Ker) 232 : (2013) 2 KHC 887 : (2013) 3 KLT 48 :
(2014) 70 VST 339

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair and V.K. Shamsudheen, for the Appellant;
Bobby John), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Appellant's challenge to detention of goods under the Kerala Value Added Tax Act, 2003, for short, "Act", was turned down by the learned single Judge relegating him to the statutory adjudication process, and, directing release of the detained goods on deposit of 50% of the amount demanded and on simple bond without surety for the balance. The refusal of the learned single Judge to interfere with the detention of goods is only to be upheld. We do so. However, the learned counsel appearing for the appellant argued that in view of the receipt of Ext.P5 bank guarantee by the officer concerned, the detained goods ought to have been released. He says that by issuing Ext.P6, the officer concerned had acknowledged receipt of Ext. P5 bank guarantee, and therefore, the detained goods ought to have been released on the basis of that bank guarantee having particular regard to S. 47(2) of the Act and Rr.67(4) (a) and 19(2) of the Kerala value Added Tax Rules, 2005, for short, "Rules".

2. The learned Government Pleader argued that in the realm of discretion, it was open to the detaining authority to refuse release of the detained goods on the strength of the bank guarantee and that the condition imposed by the learned single Judge for the release of the detained goods is reasonable and cannot be

faulted. Section 47(2) of the Act provides, among other things, that the officer concerned may, for reasons to be recorded in writing, detain goods and shall allow the same to be transported only on security being furnished for double the amount of tax likely to be evaded, as may be estimated by that officer. The two provisos to that section are not relevant for the case in hand. R.67(4)(a) of the Rules provides, inter alia, that security referred to in S. 47(2) of the Act shall be furnished in any of the ways specified in clauses (a) to (c) and (f) of R. 19(2) or by depositing the amount with the officer. While the modes of furnishing security prescribed in those clauses of R. 19(2) get incorporated by reference, into R.67(4)(a), a conjoint reading of S. 47(2) of the Act and sub-rr. 4(a) and 5 of R.67 shows that it is open to the person furnishing the security to choose any among the modes of furnishing security prescribed in R.67(4)(a). Reverting to R.67(5), it can be seen that when security is furnished, the goods can be released. On the face of these provisions, we do not see the availability of any jurisdiction with the statutory authority, to choose the form of security. Hence, when Ext.P5 bank guarantee was produced, it was obligatory in terms of the statutory provisions, that the detained goods are released; unless of course, the bank guarantee offered and produced did not cover double the amount of tax attempted to be evaded, going by the assessment of the officer concerned, once Ext.P5 bank guarantee was offered as security, the statutory authority could not have issued Ext.P6 requiring the production of cash security. That demand is plainly illegal and ultra vires the Act and Rules and is, therefore, violative of Art. 14 of the Constitution. Hence, we are obliged under the Constitution to ignore it.

In the result, the judgment of the learned single Judge is modified and it is ordered that the goods detained as per Ext. P3 shall be released forthwith, if Ext.P5 bank guarantee is in order. Adjudication following the proceedings on the basis of Ext.P3 shall be concluded in accordance with law, and, untrammelled by anything stated in this judgment or in the judgment of the learned single Judge. The Writ Appeal is ordered accordingly.