

Jayakumari Vs. Intelligence Inspector

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Court : Kerala

Decided On : Feb-11-2014

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Jayakumari

Respondent : intelligence Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON TUESDAY, THE 11^H DAY OF FEBRUARY 2014 22ND MAGHA, 1935 WP(C).No. 4235 of 2014 (D) ----- PETITIONER(S): ----- JAYAKUMARI PROPRIETOR, M/S. KALYANI FRUITS, DOOR NO.11/154, THURAVUMKARA, KALADY, ERNAKULAM DISTRICT, PIN- 683575 BY ADVS.SRI.MOHAMMED RAFIQ SRI.M.G.SHAJI RESPONDENT(S): ----- 1. INTELLIGENCE INSPECTOR SQUAD NO-II, DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE , PIN - 673 006 CAMPED AT COMMERCIAL TAX, CHECK POST, WALAYAR - 678 625.

2. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, COMMERCIAL TAXES DEPARTMENT, TRIVANDRUM - 695 001 BY SR. GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 1102-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.4325 of

2014. APPENDIX PETITIONER'S EXHIBITS: EXT.P1 TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO. 45904 DATED 31.05.2007 ISSUED BY THE COMMERCIAL TAX OFFICER, ANGAMALY UNDER THE KERALA VALUE ADDED TAX RULES, 2005 TO THE PETITIONER. EXT.P2 TRUE COPY OF THE INVOICE NO.332 DATED 08.02.2014 ISSUED BY M/S.TSM AGRO EXPORTS, COIMBATORE TO THE PETITIONER. EXT.P3 TRUE COPY OF THE NOTICE NO.VCR/II/892/13-14 DATED 09.02.2014 ISSUED BY THE 1ST RESPONDENT. EXT.P4 TRUE COPY OF COMPILATION OF PHOTOGRAPHS SHOWING THE PROCESS OF MECHANISED PEELING OF RAW PAPAYA FRUITS. EXT.P5 TRUE COPY OF COMPILATION OF PHOTOGRAPHS OF PEELED AND BRINED RAW PAPAYA FRUITS. /true copy/ P.S. TO JUDGE. P.R. RAMACHANDRA MENON, J.

..... W.P.(C)No.4235
OF2014..... Dated this the 11th
February, 2014

JUDGMENT

The petitioner is a proprietor of a Small Scale Industrial Unit, engaged in the manufacture of 'Tutti-Frutti' (raw Papaya and sugar are the raw materials for production of Tutti- Frutti) and is a registered dealer under the provisions of the Kerala Value Added Tax Act , 2003 and the Central Sales Tax Act. The goods transported in the vehicle bearing No.TN.37-AF/8425 was seized by the first respondent/Intelligence Inspector on 09.02.2014 by issuing Ext.P3 notice under Section 47(2) of the KVAT Act, doubting evasion of tax and demanding security deposit. The case of the petitioner is that while despatching the consignment there was omission on the part of the consignor at Tamilnadu to hand over the transport copy of Ext.P2 invoice and that the detention of the vehicle was made stating that the goods were not accompanied by any valid documents prescribed under the KVAT Act. It is also the case of the petitioner that 'Papaya ' fruit falls within the Entry No.21(26) of the 1st Schedule to the KVAT Act, 2003 and that by virtue of Section 6 (4), it is exempted from tax. It is further stated that the W.P.(C)No.4235 OF20142 petitioner is entitled to have the benefit of the proviso to Section 47(2)

and seeks for the benefit accordingly.

2. The prayer of the petitioner is sought to be resisted by the learned Sr. Government Pleader appearing for the respondents, stating that but for the detention, the lapse on the part of the petitioner could not have been brought to light and as such, the petitioner is not entitled for the benefit of the proviso to Section 47(2) of the KVAT Act.

3. After hearing both the sides, this Court finds that the correctness of the facts and circumstances can be brought out only by adjudication proceedings under Section 47(6) of the KVAT Act. However, for that reason, the goods and the vehicle need not be detained any further and that the same can be released to the petitioner on satisfaction of 25% of the security demanded, as per Ext.P3 and on furnishing 'simple bond' for the balance amount. The adjudication proceedings shall be finalised by the competent authority in accordance with law, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the judgment along with a copy W.P.(C)No.4235 OF20143 of the writ petition before the first respondent /Intelligence Inspector for further steps. The writ petition is disposed of.
P.R.RAMACHANDRA MENON JUDGE Ik W.P.(C)No.4235 OF20144

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