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Vellappally Constructions Vs. Aveda Resorts Andspa; Private Limited

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Court : Kerala

Decided On : Feb-17-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Vellappally Constructions

Respondent : Aveda Resorts Andspa; Private Limited

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON MONDAY,THE17H DAY OF FEBRUARY201428TH MAGHA, 1935 WP(C).No. 4631 of 2014 (D) ---------- PETITIONER: ---------- T.SAKTHI MURUGAN, PROPRIETOR, SAKTHI MURUGAN LORRY TRANSPORTERS & EARTH MOVERS, MARIAMMAN KOVIL STREET, KADAGAMPATTU, SUTHUKENEY POST, VANUR TALUK, PIN -605 502, TAMIL NADU. BY ADVS.SRI.K.N.SREEKUMARAN, SRI.P.D.UNNIKKANNAN NAIR. RESPONDENTS: ---------- 1. INTELLIGENCE INSPECTOR, COMMERCIAL TAXES, SQUAD NO. 1, ERNAKULAM, CAMP AT COMMERCIAL TAX CHECK POST, WALAYAR, PALAKKAD-678 624.

2. INTELLIGENCE OFFICER, COMMERCIAL TAXES, SQUAD NO.1, ERNAKULAM, CAMP AT COMMERCIAL TAX CHECK POST,WALAYAR, PALAKKAD-678 624.

3. DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM-682 015.

4. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001. BY SR. GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1702-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. W.P.(C).NO.4631/2014-D: APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1: TRUE COPY OF THE

JUDGMENT
DATED2401-2014 IN W.P.(C). 2439/2014 OF THIS HON'BLE COURT. EXHIBIT P2: TRUE COPY OF THE ARGUMENT NOTE FILED BEFORE THE2D RESPONDENT ON32-2014 WITHOUT DOCUMENTS. EXHIBIT P3: TRUE COPY OF THE PENALTY

ORDER
DATED32-2014 IN OR-1/709/2013-14 OF THE2D RESPONDENT. EXHIBIT P4: TRUE COPY OF THE APPEAL IN FORM29FILED BEFORE THE3D RESPONDENT ON52-2014. EXHIBIT P4(A):TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P4. EXHIBIT P4(B):TRUE COPY OF THE URGENT APPLICATION FILED IN EXT. P4. EXHIBIT P5: TRUE COPY OF THE STAY

ORDER
NO. KVATA3552014 DTD. 6-2-2014 IS ISSUED BY THE3D RESPONDENT. EXHIBIT P6: TRUE COPY OF THE STATEMENT OF ACCOUNT ISSUED BY INDUSIND BANK LTD., PONDICHERRY. RESPONDENTS' EXHIBITS: NIL. //TRUE COPY// P.S. TO JUDGE. Prv. P.R. RAMACHANDRA MENON, J.

..... W.P.(C)No. 4631 OF2014..... Dated this the 17th February, 2014

JUDGMENT

The vehicle bearing No.TN-AM.5167, while transporting an Excavator was intercepted by issuing notice under Section 47(2) of the KVAT Act doubting evasion of tax and demanding security deposit . This made the petitioner to approach this court by filing W.P.(C)2429 of 2014, which was disposed of as per Ext.P1 judgment on 24.01.2014 directing the competent authority to finalise the adjudication proceedings on or before 05.02.2014. It was accordingly that the matter was considered and finalised by the competent authority, who issued Ext.P3 order dated 03.02.2014 imposing penalty upon the petitioner. 2 . Being aggrieved of the turn of events, the petitioner preferred Ext.P4 appeal before the third respondent/Deputy Commissioner along with Ext.P4(a) petition for stay. After considering the petition for stay, the competent authority passed Ext.P5 order whereby 50% of the liability was sought to be satisfied by Demand Draft and to furnish security for the balance amount, so as to avail the benefit of the interim stay. According to the petitioner, the proceedings are per se wrong W.P.(C)No. 4631 OF20142 and illegal in all respects. There is absolutely no rationale for having imposed the condition to satisfy 50% liability. It is also the case of the petitioner that the order has been passed in a quite mechanical manner and that passing of such orders without proper application of mind has been deprecated by the Apex Court on many an occasion, including the decision in (2009) 22 VST529(Ravi Gupta vs. Commissioner of Sales Tax , Delhi and another) 3. Heard the learned Government Pleader as well.

4. During the course of hearing, the learned Counsel for the petitioner submits that, because of detention, much loss and hardships are being caused to the petitioner, since he has entered into a work contract . It is also the case of the petitioner that the subject matter is nothing but a civil contract, mainly deploying labour and as such, there is no rhyme or reason for sustaining the condition imposed.

5. After hearing both the sides, this Court finds it fit and proper to cause the goods/vehicle released on satisfying 25% of the disputed liability and on execution of a 'simple bond' for the balance amount. The Bond shall be executed by the

W.P.(C)No. 4631 OF20143 petitioner joining hands with the authorised representative of the awarder of the contract. Ext.P5 order will stand modified/varied to the said extent and the petitioner is granted 'two weeks' time to comply with the requirements. The appellate authority shall consider and pass final orders in the appeal as expeditiously as possible. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the third respondent/appellate authority(Deputy Commissioner) for further steps. The writ petition is disposed of. P.R.RAMACHANDRA MENON JUDGE lk

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