

P.M. Basheer Vs. Intelligence Inspector and ors.

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Court : Kerala

Decided On : Jun-02-2010

Judge : P.R. Ramachandra Menon, J.

Acts : Kerala Value Added Tax Act - Section 47(2); ;Kerala Value Added Tax Rules

Appeal No. : W.P. (C) No. 16774 of 2010 (V)

Appellant : P.M. Basheer

Respondent : intelligence Inspector and ors.

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : C.K. Sreejith, Adv.

Judgement :

P.R. Ramachandra Menon, J.

1. The petitioner is a dealer of granites and is doing the business on the strength of the registration obtained by him under the KVAT Act, as borne by Ext. P7. The case of the petitioner is that, in the course of his business, he purchased an 'electronic weigh bridge' from elsewhere outside the State and that was being brought in the vehicle bearing No. KA 20A 8788, when it was intercepted by the first respondent on 26.5.2010 issuing Ext.P4 notice under Section 47(2) of the

KVAT Act, pointing out some incriminating circumstances, doubting the evasion of tax and thus demanding security deposit to the extent as specified therein; the correctness and sustainability of which is under challenge in this Writ Petition.

2. The learned Counsel for the petitioner submits that, the electronic weigh bridge is very much necessary for the business/operations being pursued by the petitioner and that the same was pursued and brought for 'own use' as declared in form No. 16. It is further stated that transportation was justified on the strength of all the documents contemplated under the relevant provisions of the KVAT Act and that there is absolutely no tenable ground for the detention.

3. The learned Government Pleader appearing for the respondents submits, with reference to the materials on record, that the invoice clearly shows that the tax collected is only @ 2 %, which is the concessional rate of tax against 'form C'. The material purchased and transported is not the item that is being dealt with the petitioner as a dealer, as revealed from Ext.P1 certificate of registration. The learned Government Pleader further submits that the plea of 'own use' also stands contrary to the statutory prescription and the actual facts and figures, as the items which could be purchased for 'own use' against 'C' form are clearly detailed under the relevant provisions of the Act and Rules, where the disputed item does not find a place at all. It is also brought to the notice of this Court that, if at all it were for 'own use' the petitioner ought to have satisfied the actual rate of tax at the place of purchase, which admittedly has not been satisfied in the instant case, the rate having been satisfied paid only is @ 2 %.

4. This Court finds considerable force in the submissions made by the learned Government Pleader. The action pursued by the first respondent in detaining the vehicle and goods, doubting evasion tax with reference to the incriminating circumstances, does not prima facie appear to be wrong. This Court does not propose to go into the merits of the case, as it requires proper adjudication by the concerned authority. However, this Court does not find it necessary to detain the goods any further and that the same shall be released to the petitioner forthwith, on condition that the petitioner deposits 50% of the liability shown as security deposit in Ext.P4 and executes a 'simple bond' for the balance amount. This will

be without prejudice to the rights and interests of the respondents to pursue the 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.

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