
P.M. Basheer Vs Intelligence Inspector and Others

Writ Petition (C) No. 16774 of 2010 (V)

Court: High Court Of Kerala

Date of Decision: June 2, 2010

Acts Referred:

Kerala Value Added Tax Act, 2003 " Section 47(2)

Hon'ble Judges: P.R. Ramachandra Menon, J

Bench: Single Bench

Advocate: C.K. Sreejith, for the Appellant; No Appearance, for the Respondent

Judgement

P.R. Ramachandra Menon, J.

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 u/s 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.