

Kerala High Court

Tata Teleservices Limited vs The Commercial Tax Inspector on 12 July, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 21471 of 2010(H)

1. TATA TELESERVICES LIMITED,
... Petitioner

Vs

1. THE COMMERCIAL TAX INSPECTOR,
... Respondent

2. ASST.COMMISSIONER,

For Petitioner :SRI.A.KUMAR

For Respondent : No Appearance

The Hon'ble MR. Justice P.R.RAMACHANDRA MENON

Dated :12/07/2010

O R D E R

P.R.RAMACHANDRA MENON, J

WP(C) NO. 21471 OF 2010

Dated this the 12th day of July, 2010

JUDGMENT

The petitioner is aggrieved of the detention of the goods transported by the petitioner allegedly for 'own use'; which however was intercepted on 16.06.2010, issuing Ext.P1 notice under Section 47(2) of the Kerala Value Added Tax Act, doubting evasion of tax and demanding security deposit to the extent specified therein.

2. The incriminating circumstance noted in Ext.P4 is as follows:

"On verification of the KVAT IS, it is seen that the consignee is not permitted to transport the above mentioned item. Hence evasion of tax suspected and SD demanded".

3. The learned counsel for the petitioner concedes the factual position that the petitioner is not entitled to have the goods purchased, availing concessional rate of tax, issuing 'C form'. The case of the petitioner is that, the transaction cannot attract any tax liability, by virtue of Ext.P6 notification dated 28.01.2008 and as such, the petitioner is very much justified in transporting the goods for 'own use'. The learned counsel also submits that, the goods were very much accompanied by Ext.P2/'Form 16', supported by Ext.P3 declaration and the factual position was explained by submitting Ext.P5 reply, in response to Ext.P4 notice; which however has not been correctly appreciated by the respondents, forcing the petitioner to approach this Court for appropriate relief.

4. The learned Government Pleader for the respondents submits WP(C) No. 21471/2010 that, the defect noted as to the purchase of the materials issuing 'C form' stands rather admitted by the petitioner, which does not require to be proved any further. With regard to the correctness and applicability of Ext.P6, the learned Government Pleader submits that, this is a matter which requires to be considered by way of 'adjudication'. It is also stated that, no 'form 16' was actually accompanying the transport and that the contention raised by the petitioner to the contrary cannot be correct at all.

5. Going by the rival pleadings, this Court finds that the matter requires to be considered by way of 'adjudication', so as to bring the true state of affairs to light. But for this reason, this Court does not find it necessary to detain the goods any further and the same shall be released to the petitioner forthwith, on condition that the petitioner executes a 'simple bond' for the amount shown as security deposit in Ext.P4. This will be without prejudice to the rights and liberties of the respondents to pursue the adjudication proceedings; which shall be finalised in accordance with law, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of accordingly.

P.R.RAMACHANDRA MENON JUDGE dnc