

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No.618 of 2015 (B)

PETITIONER:

**PETE'S AUTOMOTIVE PRODUCTS (P) LTD. ,
P.B.NO.3563,M.G.ROAD,ERNAKULAM,
(REPRESENTEDBY K.C.CHACKO,MANAGING DIRECTOR).**

**BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR**

RESPONDENTS:

- 1. INTELLIGENCE INSPECTOR,SQUAD NO.III,
COMMERCIAL TAXES,ERNAKULAM ON DUTY
AT CTCP,WALAYAR-678624.**
- 2. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR,PALAKKAD DISTRICT-678624.**
- 3. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**

R1 TO R3 BY SENIOR GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

W.P(C) NO.618/2015

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:TRUE COPY OF THE INVOICE NO.52999608 DATED 17.12.2014 ISSUED BY
M/S.THYSESNKRUPP,GERMANY.**

**EXT.P2:TRUE COPY OF THE BILL OF ENTRY NO.7857846/30.12.2014 AND OTHER
ATTACHMENTS FOR CLEARANCE OF THE GOODS FROM BANGALORE
AIR PORT.**

**EXT.P3:TRUE COPY OF THE DECLARATION INFORM 8F/8FA ACCOMPANYING
THE GOODS.**

**EXT.P4:TRUE COPY OF THE NOTICE NO.OR III/1101/14-15 DATED 5.1.2015 ISSUED
BY 1ST RESPONDENT TO PETITIONER.**

**EXT.P5:TRUE COPY THE INVOICE BEARING NO.52902400 ISSUED BY
M/S.THYSESNKRUPP,GERMANY TO PETITIONER.**

**EXT.P6:TRUE COPY OF THE REPLY DATED 6.1.2015 FILED BY PETITIONER
BEFORE THE 1ST RESPONDENT.**

RESPONDENT'S EXHIBITS:

NIL

//TRUECOPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.618 of 2015 (B)

.....
Dated this the 8th day of January, 2015

JUDGMENT

The petitioner is a registered dealer under the provisions of the Kerala Value Added Tax Act & Central Sales Tax Act. Petitioner is aggrieved by Ext.P4 notice whereby a consignment of Automotive Shock Absorbers was detained at the check-post at Walayar in the course of transportation from Karnataka to Kerala. In the writ petition the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.K.N.Sreekumaran, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I dispose the writ petition with the following directions:

- (i) It is seen from a perusal of Ext.P4 notice that there is no dispute that the transportation of the goods was covered by valid documents

as prescribed under the KVAT Act. The only objection raised by the respondents is that the value of the goods shown in the 8F and 8FA documents produced, does not include the import duty, freight and insurance amounts that were borne by the importer, and to that extent, there was an under valuation of the goods in question. The said objection by the respondents cannot be a reason for detention of the goods insofar as, the under valuation, if any, would only be relevant in a subsequent sale effected by the dealer after importation of the goods into the country. It is only the latter sale that would come within the ambit of taxable sales under the KVAT Act. In the instant case, there was no subsequent sale pursuant to which the goods were being transported.

(ii) In that view of the matter, I direct the respondents to release the goods, on the petitioner executing a simple bond without sureties before the respondents, for the amounts demanded in Ext.P4 notice.

(iii) The respondents shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioner, within two months from the date of receipt of a copy of this judgment.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the respondents.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/08/01/