

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No.912 of 2015 (L)

PETITIONER:

**M/S.CASE NEW HOLLAND CONSTRUCTION
EQUIPMENT (INDIA) PVT. LTD.,D.NO.33/2474(G1),
ANZAAF ARCADE,VYSHALI,NH BYE PASS,
COCHIN-682032,REPRESENTED BY THEIR
TERRITORY MANAGER MR.ANTONY KOKKAD.**

BY ADV. SMT.K.LATHA

RESPONDENTS:

- 1. THE STATE OF KERALA,REPRESENTED BY
CHIEF SECRETARY,SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
AMARVILLA,THIRUVANANTHAPURAM,
KERALA-695001.**
- 3. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE-2,THEVARA,ERNAKULAM-682019.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

W.P(C) NO.912/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:THE TRUE COPY OF THE KVAT ONLINE REGISTRATION DETAILS OF THE PETITIONER.

EXT.P2:THE TRUE COPY OF THE APPLICATION FOR NEW BRANCH REGISTRATION FILED BY THE PETITIONER WHICH WAS ACKNOWLEDGED BY THE THIRD RESPONDENT ON 16.4.2014.

EXT.P3:THE TRUE COPY OF THE RENT AGREEMENT OF THE PETITIONER DATED 1ST DAY OF APRIL 2014 OF THE LAND PROPERTY LOCATED AT MANNATHALA, TRIVANDRUM.

EXT.P4:THE TRUE COPY OF THE MADYAPRADESH OFFICE BRANCH INVOICE NO.0691356 DATED 24.12.2014 OF THE PETITIONER'S TRIVANDRUM BRANCH ADDRESS.

EXT.P5:THE TRUE COPY OF THE DETENTION NOTICE OR NO.07/14-15 DATED 30.12.2014 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER, DEMANDING SECURITY DEPOSIT OF RS.6,48,325/-.

EXT.P6:THE TRUE COPY OF THE REPLY DATED 31ST DECEMBER, 2014,1ST JANUARY 2015 AGAINST THE P5 DETENSION NOTICE FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P7:THE TRUE COPY OF FORM 8F DATED 29.12.2014.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.912 OF 2015

Dated this the 9th day of January, 2015

J U D G M E N T

Petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 detention notice issued to him detaining a consignment comprising of an earth moving equipment, that was being transported from Madhya Pradesh to Trivandrum at his instance. 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 Smt.K.A.Latha, the learned counsel for the petitioners and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondent.

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) On a perusal of Ext.P5 detention notice, it is seen that the case of the respondents is that the transportation, which was declared to be in the nature of a stock transfer, was not accompanied by the mandatory delivery note, or any other

document to prove such transaction. Although, there are other defects noted, it is not in dispute now that the said defects were subsequently cured by the petitioner. In view of the fact that the transportation was not accompanied by a delivery note that was mandated under the Kerala Value Added Tax Act and Rules, the suspicion of the respondents, with regard to a possible evasion of tax, cannot be said to be unjustified.

(ii) Taking note of the fact however that the petitioner is a registered dealer within the state, I direct the 2nd respondent to release the consignment and the vehicle to the petitioner, on the petitioner paying 30% of the security deposit demanded in Ext.P5 and furnishing a simple bond without sureties before the said respondent, for the balance amount demanded in Ext.P5 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

