**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936**

**WP(C).No. 1068 of 2015 (G)**

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**PETITIONER :**

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**M.HAMZA,S/O.SAIDALI, AGED 40 YEARS,**
**MUNDUMMAL HOUSE, J.N.ROAD, PERINTHALMANNA,**
**MALAPPURAM DISTRICT.**

**BY ADV. SRI.BABU S. NAIR**

**RESPONDENT(S):**

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1. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   **THIRUVANANTHAPURAM,PIN-695 001**

2. **THE INTELLIGENCE INSPECTOR,**
   **INTELLIGENCE SQUAD NO.1,**
   **DEPARTMENT OF COMMERCIAL TAXES,**
   **MALAPPURAM, PIN-676 505.**

**R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**sts**

**WP(C).NO.1068/2015**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**P1** **COPY OF THE CERTIFICATE OF REGISTRARION GIVEN TO THE PETITIONER UNDER THE K.V.A.T. ACT BY THE ASSISTANT COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, MALAPPURAM DATED, 27/2/2008 WITH DETAILS OF ITEMS.**

**P2** **COPY OF THE CERTIFICATE OF IMPORTER EXPORTER CODE ISSUED BY THE DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE, COCHIN DATED 17/10/2013.**

**P3** **COPY OF THE DETAILS REGARDING BILL OF ENTRY FOR IMPORT OF GOODS.**

**P4** **COPY OF THE PAYMENT OF DUTY BY THE PETITIONER FOR AN AMOUNT OF RS.2,14,014/-**

**P5** **COPY OF THE DECLARATION OF GOODS GIVEN BY THE PETITIONER TO THE COMMERCIAL TAXES OFFICER, VALLARPADAM DATED, 9/1/2015.**

**P6** **COPY OF THE NOTICE ISSUED TO THE PETITIONER UNDER SECTION 47(2) OF THE K.V.A.T. ACT DATED, 10/1/2015.**

**RESPONDENT'S EXHIBITS:** **NIL**

**/TRUE COPY/**

**P.A.TO.JUDGE**

**sts**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.1068 OF 2015**

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**Dated this the 12th day of January, 2015**

**J U D G M E N T**

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P6 detention notice issued to him detaining a consignment of ceramic roofing tiles, that was being transported from Cochin to Manjeri 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 Sri.Babu.S.Nair, 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) A perusal of Ext.P6 detention notice would indicate that the objection of the respondents is only with regard to the non-payment of advance tax on the goods that were being transported as also a

misclassification by the petitioner of the item as roofing materials coming under 3rd schedule. It is the case of the respondents that the item ought to be classified as a residual item coming under SRO.82/2006 and not as an item under the 3rd schedule to the Kerala Value Added Tax Act. I find however that roofing tiles are not items that come under the ambit of Circular No.50/2006 dated 18.12.2006 which enumerates the commodities that are liable to pay advance tax. That apart, the objection with regard to classification of a goods for the purposes of Kerala Value Added Tax Act can only be relevant for a subsequent transaction of sale entered into by the petitioner.

(ii) In this view of the matter and considering the fact that the petitioner is a registered dealer within the state I direct the 2nd respondent to release the consignment and the vehicle on the petitioner furnishing a simple bond without sureties before the 2nd respondent for the security deposit amount demanded in Ext.P6 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**

mns/