

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 1073 of 2015 (H)

PETITIONER :

**M/S. ELNIE APPLIANCES INDIA PVT. LTD.,
TC 3/1003, GREEN PARK (OPP. DAYA HOSPITAL)
PERINGAVU P.O., THIRUVAMBADY
THRISSUR – 680 022
REPRESENTED BY THEIR MANAGING DIRECTOR
MR. P.V. SURESH.**

BY ADV. SMT.K.LATHA

RESPONDENT(S) :

- 1. THE STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY
SECRETARIAT, THIRUVANANTHAPURAM – 695 001.**
- 2. THE INTELLIGENCE INSPECTOR
SQUAD NO. IV, ERNAKULAM
DEPARTMENT OF COMMERCIAL TAXES
GOVERNMENT OF KERALA
EDAPPALLY, COCHIN – 682 024
CAMP AT WALAYAR.**

R1 & R2 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF BILL OF LADING B/L NO. AE14110164 DATED 26TH NOVEMBER 2014 AND THE PACKING LIST.
- EXT.P2 COPY OF TWO SEPARATE GATE PASS OUT DESTUFFED CARGO BOTH DATED 6-1-2015 FROM CONTAINER FREIGHT STATION CHENNAI.
- EXT.P3 COPY OF FORM 8FA DATED 6-1-2015 AT 2.13 PM DECLARING 203 PACKAGE AND FORM 8FA DATED 6-1-2015 AT 2.46 PM DECLARING 204 PACKAGES.
- EXT.P4 COPY OF FORM 15 DELIVERY NOTE DATED 6-1-2015 AT 3.05 PM DECLARING 203 PACKAGES AND FORM 15 DELIVERY NOTE DATED 6-1-2015 AT 3.17 PM DECLARING 204 PACKAGES.
- EXT.P5 COPY OF THE DETENTION NOTICE 691/14-15 DT. 7.1.2015 ISSUED BY THE SECOND RESPONDENT U/S. 47(2) OF THE KVAT ACT TO THE PETITIONER DEMANDING SECURITY DEPOSIT OF RS. 7,48,200/-.
- EXT.P6 COPY OF THE WEIGH BRIDGE TOKEN DATED 7-1-2015 VEHICLE NO. TN 52 Y 4996.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1073 OF 2015

Dated this the 14th 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.P5 detention notice issued to him detaining a consignment of goods that was being transported from Chennai to Thrissur 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.Latha.K, 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) On a perusal of Ext.P5 detention notice, it is seen that there was a discrepancy in the quantity of goods carried in the vehicles, when compared with the description in the delivery notes that were issued in respect of the consignment. The notice issued to

the petitioner also indicates that, on physical verification, there were various items, covered by the bill of entry, which were not seen transported in the vehicles. It was for the said reason that the respondents suspected the genuineness of the documents produced by the petitioner as also the bonafides of the transportation. In view of the discrepancy noticed between the actual number of items carried in the vehicle and the corresponding number shown in the delivery note that accompanied the goods, the suspicion on the part of the respondents cannot be said to be unjustified.

(ii) I take note, however, of the fact that the petitioner is a registered dealer under the Kerala Value Added Tax Act and Central Sales Tax Act, within the State. Accordingly, I direct the 2nd respondent to release the consignment and the vehicle to the petitioner on the petitioner paying 25% of the security deposit demanded in Ext.P5, and executing a simple bond without sureties, for the balance amount demanded in Ext.P5 detention notice, before the 2nd respondent.

(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/

