

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 1173 of 2015 (V)

PETITIONER:

**SUBHASH K.V.,
S/O.VELAYUDHAN, AGED 30 YEARS,
KIZHIPILLIL HOUSE, VARIKKOLI.P.O,
THIRUVANIYOOR, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT.(OWNER OF EXCAVATOR JCB
BEARING REGISTRATION NO.JS 140).**

BY ADV. SRI.P.M.ZRAJ

RESPONDENTS:

- 1. THE INTELLIGENCE INSPECTOR,
SQUAD NO.2, COMMERCIAL TAXES, ATTINGAL,
THIRUVANANTHAPURAM.PIN-695 001**
- 2. THE SUB INSPECTOR OF POLICE,
KALLAMBALAM POLICE STATION,
THIRUVANANTHAPURAM DISTRICT. PIN-695 001**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 1173 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE RETAIL INVOICE DATED 24.7.2012 ISSUED FROM
INDIA TECHS LIMITED, KOCHI-682 016**
- EXT.P2 TRUE COPY OF THE NOTICE ISSUED BY THE FIRST RESPONDENT
DATED 4.6.2014 UNDER SECTION 47(2) OF THE KERALA VALUE ADDED
TAX ACT 2003**
- EXT.P3 TRUE COPY OF THE CERTIFICATE DATED 4.6.2014 ISSUED BY
K.N.SATHYAPALAN AND COMPANY, ENGINEERING
CONTRACTORS, EDAKIDAM.P.O, EZHUKONE, KOLLAM CERTIFYING
THAT THE MACHINE HAS BEEN TRANSPORTED TO ATTINGAL FOR
THE PURPOSE OF THE WORK OF THE AYILAM BRIDGE.**
- EXT.P4 TRUE COPY OF THE COMMUNICATION DATED 5.6.2014 ISSUED BY THE
FIRST RESPONDENT TO THE OWNER OF GOODS.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.1173 of 2015 (V)

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Dated this the 13th day of January, 2015

JUDGMENT

The petitioner, who is the owner of an excavator JCB, impugns Ext.P2 detention notice that was issued to him while a used excavator was being transported from Perumbavoor to Attingal for using the same in the construction site at Attingal. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in Ext.P2 detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.P.M.Ziraj, 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.P2 detention notice, it is seen that the objection of the respondents is essentially that the transportation of the vehicle was not accompanied by the documents prescribed under Section 46(3) of the KVAT Act. It is for this reason that the respondents suspected evasion of tax. It is seen, however, that the petitioner is not a registered dealer under the Act and the averments

in the writ petition would indicate that he is only a person, who provides the excavator to others for execution of works contract. If, as a matter of fact he has not engaged in any business of letting out excavators for hire, then, there can be no liability to tax under the KVAT Act. This, however, is a matter to be adjudicated by the respondents. Under these circumstances, I direct the first respondent to release the excavator, on the petitioner executing a simple bond without sureties before the second respondent, for the security amount demanded in Ext.P2 detention notice.

(ii) 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.

(iii) It is made clear that till such time as the adjudication is completed by the adjudicating authority, the petitioner shall not part with the ownership of the excavator.

(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