

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 1428 of 2015 (C)

PETITIONER(S):

**M/S.FACADEENGINEERS P LTD.,
BUILDING NO.9/25, VYSALI ROAD,
KUZHUVELIPADY, EDATHALA P.O.,
REPRESENTED BY THEIR HR-MANAGER
MR.AVINASH P. RAJEEV.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

**1. THE STATE OF KERALA, REP. BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

**2.THE INTELLIGENCE INSPECTOR, O/O THE
INTELLIGENCE OFFICER, SQUAD NO.VI,
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM
CAMP OFFICE AT CTFC, ELOOR , ERNAKULAM 682 031.**

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF FORM 15 DELIVERY NOTE DECLARATION MADE BY THE PETITIONER ON 10TH JANUARY, 2015 AT 4.17 P.M.

EXT.P2: COPY OF THE DETENTION NOTICE OR NO.VI/655/14-15 DATED 11.1.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER DEMANDING SECURITY DEPOSIT OF RS.58,000/-.

EXT.P3: COPY OF THE DRAWING OF THIS ALUMINIUM FABRICATION.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1428 OF 2015 (C)

Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P2 notice issued to him, detaining a consignment of aluminium frames (for doors and windows) that was being transported from Edathala 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) A perusal of Ext.P2 detention notice would indicate that the consignment that was transported

contained 123 angles, over and above the aluminium frames for doors and windows, that was indicated as being transported, in the delivery notes that accompanied the goods. It was for this reason that the vehicle was detained at the check post on the apprehension of the respondents that there was a possible evasion of tax. No doubt, the petitioner would contend that the value of the goods declared as per the documents included even the value of the angles that were found to be transported. This, however, does not take away from the fact that the angles were not expressly declared in the transportation documents. The detention of the vehicles by the respondents cannot, therefore, be said to be unjustified.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State and that the transportation of the goods was duly accompanied by the documents prescribed under the KVAT Act, I direct the 2nd respondent to release the consignment of goods and the vehicle subject to the petitioner paying 25% of the security deposit demanded in Ext.P2 notice, and executing a simple bond without sureties before the said respondent, for the balance amount demanded in Ext.P2 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

prp