IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 1728 of 2015 (M)

PETITIONER :

NAVARATHAN MAL JAIN
M/S. YASH INFRATEK
TT S X68, THAYETHERU, TTX
THAZHETHERU, CIVIL STATION
KANNUR, PIN – 670 001.

BY ADV. SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENT(S) :
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1. THE COMMERCIAL TAX INSPECTOR
   COMMERCIAL TAX CHECK POST
   MUTHANGA – 673 592.

2. THE COMMERCIAL TAX OFFICER
   COMMERCIAL TAXES CHECK POST
   MUTHANGA – 673 592.

3. THE COMMERCIAL TAX OFFICER
   WORKS CONTRACT
   KANNUR – 670 001.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

WP(C).No. 1728 of 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF THE REGISTRATION CERTIFICATE UNDER KERALA VALUE ADDED TAX ACT TIN NO. 32121208023 DATED 4-3-2014.
EXT.P2		COPY OF THE DELIVERY NOTE E-SUGATHAM NO. 14083321689 DATED 12.1.2015 ISSUED BY THE PETITIONER'S BANGALURU OFFICE.
EXT.P3		COPY OF THE OUT-GATE PASS NO. 56561 DATED 12.1.2015 ISSUED BY THE PETITIONER.
EXT.P4		COPY OF THE SELF DECLARATION DATED 12.1.2015 ISSUED BY THE PETITIONER.
EXT.P5		COPY OF THE E-DECLARATION IN FORM 8F BEARING NO. 32121208023/2014-15/14 DATED 13-1-2015, FILED BY THE PETITIONER.
EXT.P6		COPY OF THE NOTICE NO. OR-3054/14-15 DATED 14-1-2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

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.1728 of 2015 (M)

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Dated this the 16th day of January, 2015

JUDGMENT

The petitioner is a registered dealer under the provisions of the Kerala Value Added Tax Act, 2003. Petitioner is aggrieved by Ext.P6 detention notice issued to him detaining a consignment of machinery, that was being transported from Karnataka to Kerala, 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.P.N.D.Namboothiri, 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.P6 detention notice, it is seen that, the objection raised by the respondents is that the goods that were being transported where declared in the form 8F as 'for the purposes of job work in Kerala'. However, in the declaration of the consignor in the form

prescribed under the Karnataka Value Added Tax Act, the goods were shown as 'required for the work site in Kerala'. It is the case of the respondents that, there is an inherent contradiction in the two declarations. In view of Ext.P2 declaration issued by the consignor at Karnataka, I do not see any inconsistency in the two documents with regard to the fact that the machinery was being transported from Karnataka to Kerala for the purposes of use in a works contract in Kerala. It is not in dispute that the transportation of the goods was otherwise covered by valid documents as prescribed under the KVAT Act. Moreover, the petitioner is a registered dealer within the state of Kerala. Under the circumstances, I direct the first respondent to release the goods and vehicle on the petitioner executing a simple bond without sureties, for the security amount demanded in Ext.P6 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) 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

AMV/16/01/