

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 2228 of 2015 (C)

PETITIONER(S):

**M/S. SREE DHANYA CONSTRUCTION COMPANY
T.C.NO.IX/875, (NEW NO.37/747), SASTHAMANGALAM,
TRIVANDRUM, REPRESENTED BY ITS MANAGING PARTNER
SRI.G.CHANDRABABU.**

BY ADV. SRI.P.NARAYANAN

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER
SQUAD NO.II, DEPARTMENT OF COMMERCIAL TAXES
THODUPUZHA-685 584.**
- 2. INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE),
DEPARTMENT OF COMMERCIAL TAXES, IDUKKI-685 603.**

R BY GOVERNMENT PLEADER SMT.LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 2228 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT P1 : COPY OF CONTRACT AGREEMENT BY THE PETITIONER WITH KSTP
DATED 15-09-2014.**

**EXT P2 : COPY OF THE PURCHASE ORDER ISSUED BY THE PETITIONER DATED
10-01-2015.**

EXT P3 : COPY OF THE TAX INVOICE DATED 14-01-2015 ISSUED BY M/S.HYUNDAI.

**EXT P4 : COPY OF THE DEMAND NOTICE DATED 19-01-2015 ISSUED BY THE
RESPONDENT UNDER S.47(2) OF THE KVAT ACT NO.OR NO.2548/2014-15.**

EXT.P4(A): COPY OF DEMAND NOTICE (IN FULL) DATED 19.1.2015.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.2228 OF 2015 (C)

Dated this the 23rd 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.P4 notice issued to him, detaining a consignment comprising of a hydraulic excavator, that was being transported from Pune to the work site of the petitioner at Ettumanoor at his instance, at Walayar Check post. 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. I have heard Sri.P.Narayanan, the learned counsel for the petitioner and Smt.Lilly.K.T., 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.P4 detention notice, I note that the objection of the respondents is essentially that, while the invoice that accompanied the transportation of the goods showed the goods to be destined for Thiruvananthapuram, the interception of the vehicle was at Thodupuzha. Accordingly, the respondents suspected that the transportation, during which the goods were intercepted, was pursuant to a subsequent sale transaction. While the learned counsel for the petitioner would rely on Ext.P1 agreement to contend that the goods that were covered by the invoice were actually transported directly to Ettumanoor, because the project site of the petitioner was at Ettumanoor, I find that in as much as the tax invoice showed the goods to be consigned to Thiruvananthapuram, the detention, on the part of the respondents, cannot be said to be unjustified.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the consignment of goods and the vehicle subject to the petitioner paying an amount of Rs.3,68,660/- towards the security deposit demanded in Ext.P4 notice and executing a simple bond without sureties for the balance amount therein before the 1st 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

prp