

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 3130 of 2015 (M)

PETITIONER(S) :

**M/S.DE HEALTHCARE (P) LTD.,
9/2D, MANCHOLAI 1ST STREET, KALAIMAGAL NAGAR,
EKKATTUTHANGAL, CHENNAI- 600 032,
REPRESENTED BY MOHANDAS.U.K, AREA MANAGER SALES.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S) :

- 1. INTELLIGENCE INSPECTOR,
SQUAD NO.I, DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM- 682 015.**
- 2. OFFICER-IN-CHARGE,
COMMERCIAL TAXES CHECK POST, WALAYAR,
PALAKKAD DISTRICT- 678 624.**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
DEPARTMENT OF COMMERCIAL TAXES, TAX TOWERS,
KILLIPPALAM, KARAMANA P.O, THIRUVANANTHAPURAM- 695 002.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** COPY OF LETTER ISSUED BY THE INDIAN RADIOLOGICAL & IMAGING ASSOCIATION DATED 15.01.2015.
- EXT.P1(A):** COPY OF LETTER ISSUED BY THE DISTRICT MEDICAL OFFICER (HEALTH), ERNAKULAM DATED 12.01.2015.
- EXT.P1(B):** COPY OF DELIVERY CHALLAN OF THE PETITIONER.
- EXT.P2:** COPY OF NOTICE IN FORM NO.17A ISSUED BY THE 1ST RESPONDENT DATED 28.01.2015.
- EXT.P3:** COPY OF THE EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE PETITIONER COMPANY DATED 20.03.2014.
- EXT.P4:** COPY OF CERTIFICATE ISSUED BY THE IRIA DATED 28.01.2015.
- EXT.P5:** COPY OF OBJECTION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 28.01.2015.
- EXT.P6:** COPY OF LETTER ISSUED BY THE 3RD RESPONDENT DATED 25.09.2013.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.3130 of 2015

.....
Dated this the 30th day of January, 2015

JUDGMENT

A linear ultra sound scanner that was being transported from Chennai to Cochin at the instance of the petitioner was detained at Walayar check post. Ext.P2 is the detention notice. 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.Harisankar V.Menon, 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 notice, it is seen that the objection of the respondents is that, while the purported transportation was for the purposes of an exhibition at Cochin, and the letter issued by the organizers of the conference at Cochin was to M/s.Cura Healthcare (P) Ltd, Chennai, the consignor in the instant case was the petitioner, who was not mentioned in the said letter issued by

the organizers of the conference. It is in that context, the respondents suspected the transportation of the goods as being one for resale in the State of Kerala. Counsel for the petitioner would, however, point out that the petitioner is actually a subsidiary of M/s.Cura Healthcare (P) Ltd., Chennai, and hence, there is no irregularity as pointed out by the respondents. It is also pointed out that, in a similar situation, the Commissioner of Commercial Taxes had permitted a consignment to be brought to Cochin for exhibition on condition that the goods were returned back through the same check post within two days after the exhibition, and further, that an undertaking was given by the consignor, before the check post authority, to the effect that, if any sale takes place during exhibition they will pay tax on the goods at the place of the exhibition. On a consideration of the said submission, I am of the view that the petitioner can also be permitted to transport the consignment on the same condition as in Ext.P6 order of the Commissioner. Accordingly, I direct the 1st respondent to release the consignment and the vehicle on the petitioner undertaking before the 1st respondent that the scanning equipment will be returned back to Chennai through the same check post within two days after the exhibition, and further, that if the scanning machine is sold during the exhibition, the petitioner will pay tax thereon before the KVAT authorities at Cochin. The petitioner is directed

file the said undertaking before the 1st respondent, and also furnish a bond without surety for the security deposit amount demanded in Ext.P2.

(ii) The 1st respondent 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/