

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 3296 of 2015 (J)

PETITIONER :

**HIMALAYA DRUG COMPANY,
27/2164-A, ANANTHMOORTHY CHIRA ROAD,
KADAVANTHARA, COCHIN-682 020,
REPRESENTED BY IT'S C & F AGENT MR. G.MANIKANDAN.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001**
- 2. THE INTELLIGENCE OFFICER, SQUAD NO.V,
MATTANCHERRY, MINI CIVIL STATION,
PERUMBAVOOR,PIN-682 003**
- 3. THE COMMISSIONER, COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 001**

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.3296/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE DETENTION NOTICE OR NO.1270/14-15 DATED 28/1/2015
ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DEMANDING
SECURITY DEPOSIT OF 5,65,190/-**
- P2 COPY OF THE CLARIFICATION PETITION FILED BY THE PETITIONER BEFORE
THE THIRD RESPONDENT**
- P3 COPY OF THE HEARING NOTICE DATED 4/11/2014 ISSUED BY THE THIRD
RESPONDENT TO THE PETITIONER.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 3296 of 2015 (J)

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Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner is a registered dealer under the provisions of the Kerala Value Added Tax Act, 2003. Petitioner is aggrieved by Ext.P1 detention notice whereby a consignment of Ayurvedic Medicines, that was being transported from Bangalore to Cochin, at the instance of the petitioner, was detained by the respondents at the check-post at Walayar. 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) On a perusal of Ext.P1 notice, it is seen that the objection of the respondent is essentially with regard to the rate of tax that is payable in respect of the goods in question. While the respondent

contends that the goods in question attract tax @ 14.5%, the petitioner would contend that the items are Ayurvedic medicines that are taxable @ 5%. I take note of the fact that, the issue with regard to classification is a contentious one and is pending adjudication at various levels. In that view of the matter, and considering the fact that the petitioner is a registered dealer, I direct the 2nd respondent to release the goods and vehicle, on the petitioner executing a simple bond without sureties for the security deposit demanded in Ext.P1 detention notice.

(ii) The 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/02/02/