

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 4105 of 2015 (K)

PETITIONER(S):

**M/S. R.B. WIRES, VII/961,
INDUSTRIAL AREA, POST ANCHERRY,
THRISSUR - 680 005, REPRESENTED BY THEIR
MANAGING PARTNER MR.P.D.BABY.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

**1.THE STATE OF KERALA, REPRESENTED BY CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM 695001.**

**2.THE COMMERCIAL TAX OFFICER, VAT CIRCLE-I,
THRISSUR 680 005.**

**3.THE INTELLIGENCE INSPECTOR, COMMERCIAL TAX CHECKPOST,
CTCP, WALAYAR 678 105.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C).NO.4105/2015.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER DATED 8.5.2007 ISSUED BY THE SECOND RESPONDENT WITH TIN NUMBER 32080535774C UNDER THE KERALA VALUE ADDED TAX ACT.

EXT.P2: COPY OF THE INVOICE NO.3826 DATED 29.1.2015 ISSUED BY HIRA, R.R.ISPAT, RAIPUR TO THE PETITIONER.

EXT.P3: COPY OF THE FORM 8F DOWNLOADED IN THE NAME OF M/S.M.D.ENTERPRISES, TRISSUR DATED 4TH FEBRUARY, 2015 AT 3.20 PM.

EXT.P4: COPY OF THE FORM 8F ISSUED IN THE NAME OF THE PETITIONER DATED 4TH FEBRUARY, 2015 AT 8.37 PM.

EXT.P5: COPY OF THE DETENTION NOTICE 629/14-15 DATED 45.2.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER DEMANDING SECURITY DEPOSIT OF RS.75,440/-.

EXT.P6: COPY OF THE PARTNERSHIP DEED DATED 3RD OCTOBER, 2012 OF THE FIRM M.D.ENTERPRISES, TRISSUR AND THE PETITIONER DATED 17TH OCTOBER, 2012.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4105 OF 2015 (K)

Dated this the 9th day of February, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P5 notice issued to him, detaining a consignment comprising of HB wires that was being transported from Raipur to Thrissur at the instance of the petitioner, at the 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 Smt.Latha.K., the learned counsel appearing for the petitioner and also Smt.Lilly.K.T., the learned Government Pleader appearing 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.P5 detention notice, it is seen that the objection of the respondents is that the Form 8F in respect of the consignment was initially filed by another dealer, namely, M.D.Enterprises, whereas the invoice showed the consignment as consigned to the petitioner. Counsel for the petitioner would state that both M.D.Enterprises and R.B.Wires, the petitioner herein, are managed by the same individual and the erroneous filing of Form 8F declaration was only an inadvertent mistake committed by the said individual. I note however that, insofar as the Form 8F declaration that was filed at the time of transportation of the goods was in the wrong name, the detention on the ground of suspicion of evasion of tax cannot be said to be unjustified.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State and that he has subsequently filed Ext.P4 declaration in Form 8F after cancelling the earlier declaration in Form 8F that was filed by him, I direct the 3rd respondent to release the consignment of goods and the vehicle subject to the petitioner paying 25% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without sureties before the said respondent, for the balance amount demanded in Ext.P5 notice.

(iii) The petitioner shall also produce the

original of the invoice mentioned in Ext.P5 before the said respondent.

(iv) 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.

(v) 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