

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 5015 of 2015 (B)

PETITIONER :

**TAMAR INDIA SPICES PVT.LTD.,
VARAPETTY P.O., KOTHAMANGALAM,
REPRESENTED BY ITS MANAGING DIRECTOR M.K. ASHARAF**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENTS :

- 1. THE INTELLIGENCE INSPECTOR, SQUAD NO. 1,
OFFICE OF THE INSEPCTING ASSISSTANT COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE - 673001**
- 2. THE INTELLIGENCE INSPECTOR ,
COMMERCIAL TAX CHECK POST, WALAYAR, PALAKKAD-678624.**
- 3. THE INTELLIGENCE OFFICER,
COMMERCIAL TAX CHECK POST, WALAYAR, PALAKKAD-678624.**

R1 TO R3 BY GOVERNMENT PLEADER SRI. SUDHEESH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE COMMUNICATION EVIDENCING REGISTRATION OF THE PETITIONER UNDER KVAT AND CST ACTS.
- P2: COPY OF THE NOTICE NO. OR/VCR1/475/14-15 DT 5/2/2015 ISSUED BY THE R1 TO THE PETITIONER.
- P3: COPY OF THE INVOICE DATED 29/1/2015 ISSUED BY H.A. ENGINEERING WORKS, HYDERABAD TOT EH PETITIONER.
- P4: COPY OF THE OBJECTION DT 11/2/2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.5015 of 2015 (B)

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Dated this the 18th day of February, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P2 detention notice whereby a consignment of machinery, that was being transported from Hyderabad to Kothamangalam at the instance of the petitioner, was detained by the check post authorities 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 Sri.Firoz K.M., the learned counsel for the petitioner and Sri.Sudheesh Kumar, 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, it is seen that, the objection of the respondents is with regard to the concessional rate of 2%, which was paid by the consignor for the goods in question under the CST Act. The case of the petitioner is that, they had never offered to furnish a 'C' Form to the consignor and hence if there was any payment of tax at a

lower rate, then it was for the authorities in Andrapradesh to proceed against the consignor for levy of differential tax. For the erroneous payment of the tax by the consignor, the petitioner as consignee cannot be proceeded against, is the contention.

ii) The learned Government Pleader on the other hand would submit that, insofar as it is the contention of the petitioner that, he has not furnished any 'C' Form to the consignor and accordingly, the consignor has paid tax at the reduced rate, there was a possibility of evasion of tax by the consignor, for which the authorities under the KVAT Act can proceed against the consignment. I am not impressed with the said submission primarily because, the liability for any differential tax has necessarily to be on the consignor and the differential tax, under the CST Act, can be collected only by the State from which the consignment originated. That apart, I also find that the petitioner is a registered dealer in the State. Under the said circumstances, I direct the 2nd respondent to release the goods and vehicle to the petitioner, on the petitioner furnishing a simple bond without sureties for the security deposit amount demanded in Ext.P2 detention notice, before the 2nd 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/18/02/