

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7412 of 2015 (B)

PETITIONER :

**M/S. EMERALD ELEVATORS,
A REGISTERED PARTNERSHIP FIRM HAVING ITS REGISTERED
OFFICE 19/199F, 1 FLOOR, ADAMBAYIL BUILDING,
OPP. GOVT. POLYTECHNIC COLLEGE, HMT ROAD, KALAMASSERY,
ERNAKULAM-683 104, REPRESENTED BY ITS MANAGING PARTNER
SMT. REJI BIJI.**

**BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SMT.KALA G.NAMBIAR
SRI.K.AMAL NATH NAIK
SMT.DEEPTI SUSAN GEORGE
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF TAXES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001**
- 2. COMMERCIAL TAX INSPECTOR,
DEPARTMENT OF COMMERCIAL TAXES,
COMMERCIAL TAX CHECK POST, WALAYAR-678 624.**

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.7412/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE WORK ORDER DATED 11/02/2015 AWARDED TO THE PETITIONER BY CENTRE COURT OWNERS ASSOCIATION.**
- P2 COPY OF THE INVOICE DATED 21/02/2015 RAISED ON THE PETITIONER FIRM BY M/S MASS ELEVATORS INDIA PVT. LTD., BANGALORE.**
- P3 COPY OF THE NOTICE DATED 25/02/2015 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 47(2) OF THE KVAT ACT, 2003.**
- P4 COPY OF THE QUARTERLY RETURN UNDER THE KVAT ACT, 2003 DATED NIL FILED BY THE PETITIONER FIRM FOR THE PERIOD OCTOBER 2014 TO DECEMBER 2014.**

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.7412 of 2015

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Dated this the 9th day of March, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P3 detention notice issued to him, detaining a consignment comprising of landing door header assembly, that was being transported at the instance of the petitioner. 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.Aswin Gopakumar, 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.P3 detention notice, it is seen that the objection of the respondents is essentially with regard to the fact that the petitioner was found to have defaulted in filing

returns for the period from October, 2014 to December, 2014 and it was therefore suspected that there would be an evasion of payment of tax by the petitioner. Counsel for the petitioner relies on Ext.P4 return produced by him in the writ petition, to contend that the said returns were uploaded on to the KVATIS software on 29.01.2015.

(ii) Taking note of the fact that petitioner is a registered dealer, I direct the 2nd respondent to release the goods and the vehicle to the petitioner on his furnishing a simple bond without surety for the security deposit demanded in Ext.P3 before the 2nd respondent.

(iii) The 2nd 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.

(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

