IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7625 of 2015 (C)

PETITIONER(S):

M/S. FISCOTECH,
PERUMPADAPPA POST,
MALAPPURAM DISTRICT, REPRESENTED BY
ITS MANAGING PARTNER, KUNHALAN M.

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

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER,
PONNANI - 678 577.

2. COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST,
VELANTHAVALAM, PALAKKAD DISTRICT - 698 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 7625 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT. P1: COPY OF INVOICE ISSUED BY M/S.SRI.VISHNU MACHINERY MANUFACTURERS,COIMBATORE.

EXT.P2: COPY OF NOTICE IN FORM NO.17A ISSUED BY THE 2ND RESPONDENT.

EXT.P3: COPY OF CERTIFICATE ISSUED BY M/S.SRI.VISHNU MACHINERY MANUFACTURERS, COINBATORE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7625 OF 2015 (C)

Dated this the 11th day of March, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P2 notice issued to him, detaining a consignment of cutting machines, that was being transported at his instance. 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 the learned counsel appearing for the petitioner and also 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.P2 detention notice, it is seen that the objection of the respondents is that the petitioner did not have the authorisation to purchase cutting machines from outside the State since the said

item was not included in the registration certificate issued to him. Counsel for the petitioner would submit that the payment of tax at concessional rate against 'C' Form was a mistake that was occasioned at the instance of the supplier and the supplier had since paid the differential tax as applicable to regular dealers and this fact is evidenced by Ext.P3 certificate.

(ii) In view of the subsequent correction of the mistake by the supplier, I direct the 2^{nd} respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P2 detention notice, before the said 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.

(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

prp