

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 8401 of 2015 (A)

PETITIONER :

**JOBRUN G. VARGHESE, PROPRIETOR,
LOURDES MATHA CASHEW INDUSTRIES,
PUTHOOR, KOLLAM.**

**BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, ARYANKAVU,
KOLLAM-691 309**
- 2. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST, ARYANKAVU,
KOLLAM-691 309**
- 3. THE ASSISTANT COMMISSIONER
(ASSESSMENT COMMERCIAL TAXES, SPECIAL CIRCLE,
KOTTARAKKARA, KOLLAM.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.8401/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE REGISTRATION CERTIFICATE DATED 28/8/2014**
- P2 COPY OF THE IMPORT INVOICE NO.3 DATED 16/1/2015.**
- P3 COPY OF THE BILL OF ENTRY NO.8573467 DATED 12/3/2015**
- P4 COPY OF THE FORM 15 DELIVERY NOTE NO.320202/DN/144439/2014 DATED 12/3/2015**
- P4(A) COPY OF THE FORM KK DELIVERY NOTE NO.401 DATED 12/3/2015.**
- P4(B) COPY OF THE FORM 8F DECLARATION DATED 12/3/2015**
- P5 COPY OF THE NOTICE NO.2770/14-15 DATED 13/3/2015.**
- P6 COPY OF THE REPLY DATED 13/3/2015 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 8401 of 2015

Dated this the 17th day of March, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P5 notice issued to him detaining a consignment of Automatic Cashew Shelling Machine that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent 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.S.K.Devi, the learned counsel appearing for the petitioner and also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondent.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with the following directions:

- (i) On a perusal of Ext.P5 notice, it is seen that the objection of the respondent is with regard to the documents that accompanied the transportation of goods. The delivery note that accompanied the goods indicated that the goods was being consigned to the petitioner as stock transfer. The respondents

found that the petitioner was not authorised to effect an interstate stock transfer or import of the particular machine that was being transported. Further, although the case of the petitioner is that he was importing the goods in question for his own use, there was no document with him such as Form-16 declaration, that accompanied the transportation to evidence the said fact. Under such circumstances, the detention on the part of the respondents cannot be said to be unjustifiable.

(ii) I take note, however, of the fact that the petitioner is a registered dealer in the State, and direct the 1st respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his paying 25% of the security deposit amount demanded in Ext.P5 notice and furnishing a simple bond without sureties for the balance amount demanded in the notice, before the 1st respondent.

(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 1st respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE