

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 8662 of 2015 (G)

PETITIONER(S):

**FORBES, EWART AND FIGGIS PRIVATE LTD.
SUBRAMANIAN ROAD, WILLINGDON ISLAND,
COCHIN-682 003. REP. BY ITS MANAGING DIRECTOR
SRI.PAULOSE JOSEPH**

BY ADV. SRI.DEEPU THANKAN

RESPONDENT(S):

**THE COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST, ARYANKAVU.P.O.,
KOLLAM 691 309.**

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE INVOICES DATED 18.2.2015.

EXT.P2: COPY OF THE INVOICES DATED 19.2.2015.

EXT.P3: COPY OF THE INVOICES DATED 19.2.2015.

EXT.P4: COPY OF THE INVOICES DATED 24.2.2015.

EXT.P5: COPY OF THE INVOICES DATED 25.2.2015.

EXT.P6: COPY OF THE INVOICES DATED 25.2.2015.

EXT.P7: COPY OF THE INVOICES DATED 25.2.2015.

EXT.P8: COPY OF THE INVOICES DATED 25.2.2015.

EXT.P9: COPY OF THE INVOICES DATED 25.2.2015.

EXT.P10: COPY OF FORM NO.8 F UPLOADED IN THE WEBSITE OF THE KERALA COMMERCIAL TAX DEPARTMENT DATED 12.3.2015.

EXT.P11: COPY OF THE NOTICE ISSUED UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT DATED 13.3.2015 BY THE RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8662 OF 2015 (G)

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P11 notice issued to him, detaining a consignment of black tea, that was being transported at the instance of the petitioner, by the respondent. 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 the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondent.

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.P11 detention notice, it is seen that the objection of the respondent is essentially with regard to the documents that accompanied the

transportation of the goods. While the goods were transported pursuant to an interstate sale, the declaration that accompanied the transportation showed the goods to be stock transferred. In that view of the matter, the detention by the respondent cannot be said to be unjustified.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State, and further that the description of the transportation as a stock transfer was only a mistake that was occasioned by the petitioner, I direct the respondent to release the goods subject to the petitioner paying 25% of the security deposit amount demanded in Ext.P11 and furnishing a simple bond without sureties for the balance amount demanded in Ext.P11 notice, before the respondent.

(iii) 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.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp