IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 9188 of 2015 (W)

PETITIONER :

M/S. UNIVERSAL AGENCIES,
PALAKKAL ANGADI
THRISSUR – 680 001
REPRESENTED BY M.I. PAUL
MANAGING PARTNER.

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

RESPONDENT(S) :
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1. **COMMERCIAL TAX OFFICER,**
   VAT CIRCLE – 1, THRISSUR – 680 001.

2. **INTELLIGENCE INSPECTOR**
   SQUAD NO. V, DEPARTMENT OF COMMERCIAL TAXES
   ERNAKULAM – 682 015.

R1 & R2 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 9188 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	**:**	**COPY OF REGISTRATION CERTIFICATE ISSUED BY THE 1ST RESPONDENT DATED 16-5-2007.**
EXT.P2		**COPY OF E-MAIL ISSUED BY THE SUPPLIER AT MUMBAI DATED 10-12-2013.**
EXT.P3		**COPY OF E-MAIL ISSUED BY THE PETITIONER TO THE SUPPLIER AT MUMBAI DATED 31-1-2014.**
EXT.P4		**COPY OF E-MAIL ISSUED BY THE SUPPLIER AT MUMBAI DATED 1-2-2014.**
EXT.P5		**COPY OF CERTIFICATE ISSUED BY THE SUPPLIER AT MUMBAI M/S. SUNJAY TECHNOLOGIES (P) LTD DATED 3-3-2015.**
EXT.P6		**COPY OF NOTICE IN FORM NO. 17A ISSUED BY THE 2ND RESPONDENT DATED 20-3-2015.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.9188 OF 2015

Dated this the 24th 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.P6 detention notice issued to him detaining a U.V. Spectro photo meter, 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 for the petitioner and also 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.P6 detention notice, it is seen that the objection of the respondents is essentially that the goods which were claimed to be returned from the manufacturer, on the ground that the goods that was received by the

said manufacturer was in damaged condition, was not accompanied by any document which showed that it was the same goods, as was sent by the petitioner, that was being returned to the petitioner in the consignment that was detained. Counsel for the petitioner would submit that, while he had sent the goods to the manufacturer, based on a defect that was intimated to him by his customer, the manufacturer returned the goods back to the petitioner stating that the goods in question were received by the manufacturer in a damaged condition. It is not in dispute, however, that the goods on their return journey to the petitioner, were not accompanied by valid documents as prescribed under Section 46 (3) of the Kerala Value Added Tax Act. In that sense, the detention on the part of respondents cannot be said to be unjustified. I take note of the fact, however, that petitioner is a registered dealer within the State and he has produced documents along with writ petition, to show that the goods were returned by the manufacturer because it was found to be damaged when the manufacturer received the goods. I therefore direct the 2nd respondent to release the goods and the vehicle to the petitioner on his paying 25% of the security deposit amount demanded in Ext.P6 notice and furnishing a simple bond without sureties before the said respondent, for the balance amount demanded in Ext.P6 notice.

(ii) The 2nd respondent shall also inspect the goods to verify the claim of the petitioner that the goods were damaged during transportation. The petitioner shall also produce before the 2nd respondent, the documents that would show that, it was the very same goods, that had originally been procured by the petitioner from the manufacturer at Bombay, that were returned to him under the cover of documents, and further re-transported from the manufacturer back to the petitioner in the transportation that was the subject matter of detention.

(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

mns/