IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 9799 of 2015 (Y)

PETITIONER :

M/S. PRIZM PAYMENT SERVICES P LTD.,
LEVEL-3, SILICON TOWERS, # 23/1,
VELACHERY TAMBARAM MAIN ROAD, CHENNAI-600 100,
REPRESENTED BY IT'S MANAGER MR. SHIVA BHARTHI.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM-695 001

2. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAXES, COMMERCIAL TAX CHECK POST,
   MUTHANGA-673 592.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.9799/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE DETENTION NOTICE OR NO.905 DATED 20/3/2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT.

P2 COPY OF THE RELEVANT PORTION OF THE AGREEMENT FOR OUTSOURCING OF INSTALLATION AND MANAGED SERVICES FOR 2100 CASH DISPENSERS DATED 17TH DAY OF MARCH 2015 ENTERED BY THE PETITIONER COMPANY WITH BANK OF INDIA AND THE RELEVANT PORTION OF IT'S ANNEXURE A TO G.

P3 COPY OF THE CERTIFICATE OF AUTHORIZATION NO.62/2013 ISSUED BY THE CHIEF GENERAL MANAGER OF THE RESERVE BANK OF INDIA CENTRAL OFFICE, MUMBAI DATED 25TH DAY OF NOVEMBER 2013 TO THE PETITIONER.

P4A COPY OF THE TAX INVOICE NO.PWH 2486/14-15 DATED 6TH MARCH 2015, ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4B COPY OF THE TAX INVOICE NO.PWH 2597/14-15 DATED 6TH MARCH 2015, ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4C COPY OF THE TAX INVOICE NO.PWH 2473/14-15 DATED 6TH MARCH 2015 ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4D COPY OF THE TAX INVOICE NO.PWH 2468/14-15 DATED 6TH MARCH 2015, ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4E COPY OF THE TAX INVOICE NO.PWH 2542/14-15 DATED 6TH MARCH 2015, ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4F COPY OF THE TAX INVOICE NO.PWH 2550/14-15 DATED 6TH MARCH 2015, ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P4G COPY OF THE TAX INVOICE NO.PWH 2461/14-15 DATED 6TH MARCH 2015 ISSUED BY NCR CORPORATION INDIA P LTD., PUDUCHERRY TO THE PETITIONER.

P5 COPY OF THE FORM NO.8F E CONSIGNMENT DECLARATION CORRESPONDING TO P4A TO P4G INVOICES

P6 COPY OF THE FORM NO.16 CERTIFICATE OWNERSHIP CORRESPONDING TO P4A TO P4G INVOICES.

P7 COPY OF THE ORDER IN APPEAL NO.413 OF 2013 ISSUED BY THE VALUE ADDED TAX TRIBUNAL, PUNJAB DATED 15/11/2013 TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

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P.A.TO.JUDGE

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 9799 of 2015
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Dated this the 26th day of March, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P1 notice issued to him detaining a consignment of Automatic Teller Machines 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. 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 as also the submissions made across the bar, I dispose the writ petition with the following directions:

> (i) On a perusal of Ext.P1 notice, it is seen that the objection of the respondents is essentially with regard to the documents that accompanied the transportation of goods. It is stated that in the invoice that accompanied the goods, the consignor and the consignee were shown as the same person, who is not a registered dealer. Counsel for the

petitioner would submit that the invoice is issued by the vendor in Pondicherry and the consignee is the petitioner, and the delivery of the goods was also destined to another place of business of the petitioner. It is pointed out that under an agreement with banks, the petitioner was obliged to install ATM Machines at various locations and provide the service of ATM Machine on behalf of the respondent bank to its customers. The ownership and control over the ATM remains at all times with the petitioner. It is also pointed out that the transportation of goods was accompanied by a Form-16, that was uploaded in the KVAT Act software. Taking note of the said submission, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the notice, before the 2nd respondent.

(ii) 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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