

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 10074 of 2015 (H)

PETITIONER(S):

**M/S.NEXTHERMAL MFG. (I) PVT. LTD.,
NO.3B, PHASE II, KIADB INDUSTRIAL AREA,
KUMBALAGODU, BANGALORE-560 074,
REPRESENTED BY ITS MANAGING DIRECTOR
SRI.PRASANTA TARAFDAR.**

BY ADV. SRI.TOMSON T.EMMANUEL.

RESPONDENT(S):

- 1. INTELLIGENCE INSPECTOR,
COMMERCIAL TAXES, SQUAD NO.V,
ERNAKULAM, COCHIN-682 015.**
- 2. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.V,
ERNAKULAM, COCHIN-682 015.**
- 3. NEERAJ BALAN, PROPRIETOR,
M/S.ANB TOOLERS, XI/231A,
PADIYAM P.O., ANTHIKAD-680 641,
THRISSUR DISTRICT.**
- 4. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, ALUVA-683 101.**

R1, R2 & R4 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE PERMANENT ACCOUNT NO.AABCH 3488F ISSUED TO THE PETITIONER BY THE INCOME TAX AUTHORITIES.
- EXT.P2 COPY OF THE REGISTRATION CERTIFICATE DATED 28/12/2010 UNDER THE KARNATAKA VALUE ADDED TAX AND CENTRAL SALES TAX RULES OF KARNATAKA.
- EXT.P3 COPY OF THE BILL NO.T-0115/14-15 DATED 08/10/2014 OF THE PETITIONER RAISED ON 3RD RESPONDENT, AS PER THE CONSIGNOR STATE LAWS.
- EXT.P3A COPY OF THE INVOICE NO.M-01087/14-15 DATED 08/10/2014 OF THE PETITIONER RAISED ON 3RD RESPONDENT AS PER THE CONSIGNOR STATE LAWS.
- EXT.P4 COPY OF THE NOTICE NO.OR.V/463/2014-15 DATED 10/10/2014 ISSUED ON THE 3RD RESPONDENT, DEMANDING SECURITY DEPOSIT U/S.47(2) TO THE KVAT ACT.
- EXT.P5 COPY OF THE LETTER DATED 11/10/2014, IN CANCELLING THE PURCHASE ORDER FOR DELAY IN DELIVERY.
- EXT.P6 COPY OF THE REPLY DATED 05/11/2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT AGAINST EXT.P4 NOTICE, WITH A REQUEST FOR PERMITTING RETURN OF GOODS BACK TO BANGALORE.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.10074 of 2015 (H)

.....
Dated this the 27th day of March, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P4 detention notice whereby, a consignment of industrial heaters, that was being transported at the instance of the petitioner, was detained by the respondents. 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. Heard Sri.Tomson T.Emmanuel, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, 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.P4 detention notice, it is seen that the objection on the part of the respondents is that, the goods were not accompanied by a mandatory Form 8FA declaration as prescribed under the KVAT Act. The learned counsel for the petitioner would submit that, since the consignee of the goods has refused to take delivery of the same, the petitioner is returning the goods to Bangalore, from where it was consigned. It is also stated that, although there was no Form 8FA declaration, the

transportation of the goods was accompanied by E sugam that was the prescribed document under the Karnataka Value Added Tax Act. Inasmuch as the consignment was not accompanied by a Form 8FA declaration as mandated under the KVAT Act, the detention on the part of the respondents cannot be said to be unjustified. I also take note of the fact that, the petitioner is not a registered dealer in the State. Under the said circumstances, I direct the 1st respondent to release the goods to the petitioner subject to the condition that the petitioner pays 25% of the amount demanded as security deposit in Ext.P4 detention notice, and executing a simple bond without sureties for the balance amount demanded therein, before the 1st respondent.

(ii) 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE