

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 10953 of 2015 (T)

PETITIONER(S):

**M/S. CARNIVAL FILMS PVT LTD
CN 10, CHURCH NAGAR, ANGAMALY 683 572,
ERNAKULAM DISTRICT, REPRESENTED BY ITS
ASSISTANT MANAGER ACCOUNTS, SRLDIPIN DIVAKARAN.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

**1.INTELLIGENCE INSPECTOR
SQUAD NO.VI, COMMERCIAL TAXES FACILITATION CENTRE,
ELOOR, ERNAKULAM, COCHIN - 682 033.**

**2.COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, ANGAMALY 683 572.**

R BY GOVERNMENT PLEADER SRI.P.FAIZAL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF CERTIFICATE DATED 17.2.2014, UNDER THE KERALA VALUE ADDED TAX ACT ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P2: COPY OF TAX INVOICE NO.AMS300507 DATED 14.3.2015, RAISED ON THE PETITIONER BY M/S.A M SERVICES, MUMBAI FOR THE SALE OF 'OSRAM' PROJECTOR LIGHTING EQUIPMENT, AGAINST FULL RATE OF CENTRAL SALES TAX.

EXT.P3: COPY OF NOTICE OR NO.VI/820/14-15 DATED 15.3.2015 ISSUED BY THE 1ST RESPONDENT, THROUGH ON DOT COURIER, DEMANDING SECURITY DEPOSIT U/S.47(2) TO THE KAVAT ACT, FOR THE REASON OF NOT PRODUCING FORM NO.8FA AT THE TIME OF DETENTION.

EXT.P4: COPY OF FORM NO.8FA DATED 20.3.2015, SUBMITTED BY THE PETITIONER, BEFORE THE 1ST RESPONDENT, AGAINST EXT.P3 NOTICE, POINTING OUT THAT IN FACT THE DUTY TO OBTAINING AND PRODUCE THE DECLARATION IS UPON THE TRANSPORTER AND THE PETITIONER WAS NOT INFORMED OF THE TRANSPORT MADE BY RAIL.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10953 OF 2015 (T)

Dated this the 1st day of April, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P3 notice issued to him, detaining a consignment of projector parts, 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 and the submissions made across the Bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P3 notice, it is seen that the objection of the respondents is essentially that the transportation of the goods was not accompanied by the necessary Form 8FA declaration. Counsel for the petitioner would submit that the Form 8FA declaration

was made available to the respondents immediately thereafter. The fact remains, however, that at the time of detention, the goods was not accompanied by a valid Form 8FA declaration.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the goods and the vehicle subject to the petitioner paying 25% of the security deposit amount demanded in Ext.P3 and furnishing a simple bond without sureties for the balance amount demanded in Ext.P3 notice, before the said respondent.

(iii) The 1st 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, untrammelled by the observations in this judgment.

(iv) The 1st respondent shall cause notice to be served on the transporter for the purposes of adjudication.

(v) 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

prp