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.10963 of 2015 (U)

PETITIONER(S):

M/S.SAI BALAJI ENGINEERING SERVICES,
NO.36,TEMPLE AVENUE,SRINAGAR COLONY,
SAIDAPET,CHENNAI-600015,REPRESENTED BY
ITS MANAGING PARTNER,SRI.A.V.VASUDEVAN.

BY ADV.SRI.TOMSON T.EMMANUEL

RESPONDENTS:
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1. INTELLIGENCE INSPECTOR,COMMERCIAL TAXES,
SQUAD NO.VII,THIRUVANANTHAPURAM AT
NEYYATTINKARA-695121.

2. ELECTRONICS TECHNOLOGY PARKS-KERALA
(TECHNOPARK),PARK CENTRE,TECHNOPARK CAMPUS,
KARYAVATTOM,THIRUVANANTHAPURAM-695581,
REPRESENTED BY ITS ASSISTANT MANAGER (PROJECTS).

3. COMMERCIAL TAX OFFICER,COMMERCIAL TAXES,
1ST CIRCLE,TAX TOWER,KARAMANA,
THIRUVANANTHAPURAM-695002.

R1 & R2 BY GOVT. PLEADER SMT.LILLY K.T.
R2 BY SMT.K.V.RASHMI, SC, TECHNOPARK

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

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W.P(C) NO.10963/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF PURCHASE ORDER NO.ETPK/PH-1/PO-03/2014-15 DATED 3.9.2014 ISSUED TO THE PETITIONER BY 2ND RESPONDENT FOR THE SUPPLY OF MECHANICAL SPARES.

EXT.P2:TRUE COPY OF REGISTRATION CERTIFICATE DATED 23.9.2014 UNDER THE KVAT ACT ISSUED TO THE 3RD RESPONDENT, TO 2ND RESPONDENT, THE CONSIGNEE OF THE GOODS, A GOVERNMENT DEPARTMENT.

EXT.P3:TRUE COPY OF TAX INVOICE NO.3070 DATED 13.3.2015 ISSUED BY THE PETITIONER FOR THE INTERSTATE SALE AGAINST FULL RAGTE OF CST, PURSUANT TO EXT.P1 PURCHASE ORDER.

EXT.P3(a):TRUE COPY OF FORM NO.JJ DELIVERY NOTE UNDER THE TAMILNADU VALUE ADDED TAX ACT DATED 13.3.2015 ACCOMPANIED WITH EXT.P3 TAX INVOICE.

EXT.P3(b):TRUE COPY OF LORRY RECEIPT NO.336960 DATED 13.3.2015 ISSUED TO THE PETITIONER BY ABT PARCEL SERVICE ON BOOKING THE GOODS WITH ET P3 AND P3(a).

EXT.P4:TRUE COPY OF NOTICE NO.1003/14-15 DATED 16.3.2015 ISSUED JOINTLY TO PETITIONER AND 2ND RESPONDENT, BY 1ST RESPONDENT, U/S 47(2) OF THE KVAT ACT DEMANDING SECURITY DEPOSIT, ALLEGING WORKS CONTRACT LIABILITY IN THE SALE.

EXT.P5:TRUE COPY OF REPLY DATED 31.3.2015 SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT ,AGAINST EXT.P4 NOTICE, BY E-MAIL.

EXT.P6:TRUE COPY OF DECLARATION DATED 31.3.2015 ISSUED BY THE 2ND RESPONDENT UNDERTAKING THE OWNERSHIP OF THE GOODS DETAINED.

EXT.P7:TRUE COPY OF CLARIFICATION NO.C3/24336/11/CT DATED 28.3.2012 ISSUED BY CLARIFYING AUTHORITY U/S.94 OF THE KVAT ACT, IN HOLDING NO TAX LIABILITY FOR INTERSTATE WORKS CONTRACT.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 10963 of 2015 (U)

...

Dated this the 1st day of April, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P4 detention notice whereby, a consignment of mechanical parts and spares, 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.Lilly K.T., 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 essentially with regard to the documents that accompanied the transportation of the goods. It is seen that, while the petitioners case is that there was a sale of goods involved, the document that accompanied the transportation was a delivery note. It is for this reason that the respondents suspected evasion of tax. The learned counsel for the petitioner would point out that, the goods were

meant for supply to a Government of Kerala undertaking, pursuant to a contract entered into with the said undertaking. Under these circumstances, although, the petitioner is not a registered dealer in the State, 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/01/04/