

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 11532 of 2015 (N)

PETITIONER(S) :

**PRECISION TESTING MACHINES PVT.LTD.,
16/2, MATHURA ROAD, FARIDABAD, HARYANA- 121 002,
REPRESENTED BY ITS AREA MANAGER, SRI.BHAVIK.T.P,
NOW RESIDING AT KULAPPULIL HOUSE, ESI ROAD, KOCHI- 18.**

**BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN**

RESPONDENT(S) :

- 1. THE COMMERCIAL TAX INSPECTOR,
SQUAD NO.2, MATTANCHERY AT KARUKUTTY, ALUVA,
DEPARTMENT OF COMMERCIAL TAXES, PIN- 683 105.**
- 2. M/S.FOCUZ AUTOMOBILE SERVICES LTD.,
FOCUZ TOWER, EDAPPALLY RAGHAVAN PILLAI ROAD,
KOCHI- 682 024.**

R1 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PURCHASE ORDER DATED 27.02.2015.

EXHIBIT P2: TRUE COPY OF THE RETAIL INVOICE DATED 28.02.2015.

EXHIBIT P3: TRUE COPY OF THE WAY BILL NO.38829481 DATED 03.03.2015.

**EXHIBIT P4: TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47(2) OF
THE KVAT ACT 2005 DATED 09.03.2015.**

EXHIBIT P5: TRUE COPY OF THE CERTIFICATE DATED 12.03.2015.

**EXHIBIT P6: TRUE COPY OF THE CANCELLATION OF THE PURCHASE ORDER
DATED 01.04.2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.11532 of 2015

.....
Dated this the 8th day of April, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P4 notice issued to him detaining a consignment of wheel alignment/wheel balancing machinery, that was being transported at the instance of the petitioner, at Walayar CTCP. 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.P4 detention notice, it is seen that the objection of the respondents is essentially with regard to the documents that accompanied the transportation of the goods. It is pointed out that, while the invoice showed the goods to be transported pursuant to an

interstate sale, in the 8F declaration, the consignment was shown as comprising of four machines and not a single machine as was described in the invoice. It is also pointed out that, while the goods were intended for the own use of the 2nd respondent, there was no Form-16 declaration evidencing that fact. Counsel for the petitioner would submit that, the Form-16 declaration was subsequently produced before the authority but on account of dispute between the petitioner and the 2nd respondent, the 2nd respondent has now refused to take possession of the goods. Under the said circumstances, he only prays that he be permitted to take back the goods to Haryana.

(ii) Taking note of the submission of counsel for the petitioner as also the fact that the transportation was seen accompanied by valid documents, I permit the petitioner to take back the goods to Haryana on his furnishing 25% of the security deposit amount demanded in Ext.P4 notice and furnishing a simple bond without surety for the balance amount demanded therein before the Intelligence Inspector, Intelligence Squad-II, Mattanchery at Karukutty. The Intelligence Inspector shall on receipt of the aforesaid amount and bond, release the goods to the petitioner forthwith.

(iii) 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.

(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/

