

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. 11538 of 2015 (N)

PETITIONER(S) :

**ABDUL JALEEL, AGED 46 YEARS,
S/O.LATE JAMALUDHEEN, PROPRIETOR,
MADATHIL WOOD INDUSTRIES, KALIKAVU, ILASSERI,
VELLAYOOR, MALAPPURAM DISTRICT- 679 327.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT(S) :

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

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.

WP(C).No. 11538 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE REGISTRATION CERTIFICATE OF
THE PETITIONER DATED 22.07.2014 UNDER KVAT ACT
EVIDENCING REGISTRATION OF THE PETITIONER UNDER KVAT
ACT.**

**EXHIBIT P1(A): A TRUE COPY OF THE REGISTRATION CERTIFICATE OF
THE PETITIONER UNDER CST ACT DATED 22.07.2014
EVIDENCING REGISTRATION OF THE PETITIONER UNDER
CST ACT.**

**EXHIBIT P2: A TRUE COPY OF THE NOTICE BEARING NO.OR 34/15-16
DATED 06.04.2015 ISSUED BY THE RESPONDENT.**

**EXHIBIT P3: A TRUE COPY OF THE DESCRIPTION OF THE MACHINE TOOL IN
WIKIPEDIA ENCYCLOPEDIA ([HTTP://EN.WIKIPEDIA.ORG/WIKI/
MACHINE TOOL](http://en.wikipedia.org/wiki/Machine_tool)) ACCESSED ON 07.04.2015.**

EXHIBIT P4: A TRUE COPY OF THE INVOICE DATED 23.03.2015 BEARING NO.95.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 11538 of 2015

Dated this the 8th day of April, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P2 notice issued to him detaining a consignment of log peeling machine and parts, that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent 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 respondent.

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.P2 notice, it is seen that the objection of the respondent is with regard to the fact that the petitioner, who is a registered dealer, was not authorised to purchase the machine in question, since the item was not included in the registration

certificate issued to him. Counsel for the petitioner would submit that the registration certificate includes, among the commodities permitted to be dealt with, machine tools and parts. It is his contention, therefore, that the machine that was transported would come within the ambit of the term 'Machine Tools' and hence he is entitled to procure the same at concessional rate of tax by issuing C-Forms to the vendor. This being a classification matter with regard to the classification of the machine either as a machine tool or a machinery for the purpose of tax, is better dealt with by the adjudicating authority in adjudicating proceedings that have to follow. For the purposes of detention, I take note of the fact that the petitioner is a registered dealer and further there is no discrepancy with regard to the documents that accompanied the transportation of the goods, and direct the 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 respondent.

(ii) The 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.

W.P.(C). No. 11538 of 2015

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

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das