IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 19TH DAY OF MAY 2015/29TH VAISAKHA, 1937

WP(C).No. 14644 of 2015 (E)

PETITIONER:

M/S. ADITYA INFOTECH LTD.,
CC 39/5374, HB-60, PANAMPILLY NAGAR,
COCHIN-682 036,
REPRESENTED BY ITS ASSISTANT MANAGER ACCOUNTS,
SRI.MENON HARISH KUMAR.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENTS:
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1. **INTELLIGENCE INSPECTOR,**
   COMMERCIAL TAXES, SQUAD NO.IV, EDAPPALLY,
   COCHIN-682 024.

2. **ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, SPECIAL CIRCLE-III,
   SALES TAX COMPLEX, THEVARA, COCHIN-682 015.

3. **DTDC COURIER & CARGO LTD.,**
   A43/1608, OPP. NORTH RAILWAY STATION ROAD,
   COCHIN-682 018.

R1 & R2 BY SR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 14644 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 01-11-2014 ISSUED TO THE PETITIONER UNDER THE KVAT AND CST ACTS BY THE 2ND RESPONDENT.

EXHIBIT P2- TRUE COPY OF INVOICE NO. 1141575017 DATED 24-042015 RAISED BY UTTARANCHAL BRANCH FOR TRANSPORT OF ELECTRONIC GOODS TO ITS COCHIB BRANCH, AS INTERSTATE STOCK TRANSFER, AGAINST INSURANCE OF 'F' FORM DECLARATION.

EXHIBIT P3- COPY OF ONLINE TRANSACTION SLIP DECLARATION NO. 320704/PAO1/10878/2015 DATED 25-04-2015 GENERATED FOR FACILITATING TRANSPORT OF GOODS AS PER EXT P2 INVOICE, ON THE BELIEF THAT GOODS WERE TRANSPORTING THROUGH ROAD.

EXHIBIT P4- COPY OF NOTICE DATED 30-04-2015 U/S. 47(2) OF THE KVAT ACT ISSUED THROUGH TO PETITIONER, THROUGH THE TRANSPORTER BY 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT.

EXHIBIT P5- COPY OF THE REPLY DATED 12-05-2015 OF 3RD RESPONDENT, SAID TO HAVE SUBMITTED BEFORE 1ST RESPONDENT AGAINST EXT P4 NOTICE AND OF GENERATION OF FORM NO. 8FA.

EXHIBIT P5(A)- COPY OF FORM NO. 8FA DATED 12-05-2015 GENERATED BY TRANSPORTER ON THE BASIS OF EXT P3 TRANSACTION SLIP.

EXHIBIT P6- COPY OF REPLY DATED 15-05-2015, SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT AGAINST EXT P4 NOTICE.

EXHIBIT P7- COPY OF JUDGMENT DATED 16-01-2015 PASSED BY THE HON'BLE COURT ON SIMILAR SET OF FACT, DIRECTING INSPECTING AUTHORITY TO RELEASE THE GOODS ON SIMPLE BOND.

RESPONDENT(S)' EXHIBITS: **NIL**
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/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.14644 of 2015

Dated this the 19th day of May, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P4 notice issued to him, detaining a consignment of electronic goods, that was being transported from Uttaranchal to Cochin at his instance . 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.P4 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 petitioner had entrusted the transportation to an agency and he had also generated a transaction slip in the KVATIS software. But, for reasons best known to the transporter, the transporting agency did not generate the 8FA declaration as it was required to do. It is

under these circumstances that, for no fault of the petitioner, the goods came to be detained. The fact remains, however, that at the time of detention, the goods were not accompanied by a valid Form 8FA declaration.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer, I direct the 1st respondent to release the goods and the vehicle subject to the petitioner paying the tax amount due on the consignment in question as advance tax by way of on line payment and producing a copy of the receipt for such payment before the 1st 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 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

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