**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937**

**WP(C).No. 21630 of 2015 (C)**
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**PETITIONER(S):**
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**M/S. PEARL ENTERPRISES, 30/1596A,**
**NARAYANAN ASAN ROAD, VYTTILA,**
**ERNAKULAM-19, REPRESENTED BY**
**MANAGING PARTNER.**

**BY ADVS.SRI.ANIL D. NAIR,**
**SRI.R.SREEJITH,**
**SMT.ROSIE ATHULYA JOSEPH,**
**SMT.O.A.NURIYA.**

**RESPONDENT(S):**
**---------------------------**

**THE INTELLIGENCE INSPECTOR,**
**SQUAD NO.1, COMMERCIAL TAXES,**
**ERNAKULAM-682 030.**

**BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

WP(C).No. 21630 of 2015 (C)

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

| | |
|---|---|
| EXT.P1 | COPY OF THE INVOICE NO.1063 DATED 13/05/2015 ISSUED TO THE PETITIONER BY THE M/S.VASAVI TRADERS. |
| EXT.P2 | COPY OF THE DELIVERY NOTE NO.000008 ISSUED TO THE PETITIONER BY M/S.VASAVI ENTERPRISES. |
| EXT.P3 | COPY OF THE DECLARATION IN FORM NO.8F ISSUED BY M/S.VASAVI TRADERS. |
| EXT.P4 | COPY OF THE E-CONSIGNMENT DECLARATION IN FORM NO.8F. |
| EXT.P5 | COPY OF THE AFFIDAVIT DATED 14/07/2015 FURNISHED BY M/S.VASAVI TRADERS. |
| EXT.P6 | COPY OF THE NOTICE NO.ORI/282/15-16 DATED 14/07/2015. |

**RESPONDENT'S EXHIBITS:-** NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

**A.K.JAYASANKARAN NAMBIAR, J.**

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W.P.(C).No.21630 of 2015

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Dated this the 17th day of July, 2015

**J U D G M E N T**

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P6 detention notice issued to him detaining a consignment of confectionery that was being transported interstate 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 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.P6 detention notice, it is seen that the objection of the respondents is essentially with regard to the classification effected by the petitioner of the goods that were being

transported. In the 8F declaration as well as in the invoice, the commodity transported was shown as confectionery unbranded. It is the case of the petitioner that what is transported is essentially chocolates, and inasmuch as it was not sold under a brand name, it was declared as “confectionery unbranded”. The stand of the respondents, however, is that the commodity in question would come within the ambit of “sugar confectionery” which attracts 14.5% tax within the State. The respondents also rely on the HSN Code applicable to sugar confectionery and maintain that the goods transported by the petitioner are actually sugar confectionery attracting a higher rate of tax. I take note of the fact that, the petitioner is a registered dealer in the State, and that the transportation of the goods was duly accompanied by a valid document as prescribed under the KVAT Act. As regards the aspect of misclassification, this is something that the respondents can look into if and when the goods are subsequently sold by the petitioner within the State under a different classification from what the respondents attribute to the commodity in question. As far as the detention is concerned, I am of the view that, it would suffice to protect the interest of the revenue, to permit them to take a sample of the goods transported, so that they can carry on further investigation as and when the goods are sold by the petitioner within the State. I, therefore, dispose the writ petition with a direction to the respondent to release the goods and the vehicle to the petitioner on his furnishing a simple bond without surety for the security deposit amount demanded in Ext.P6.

(ii) The respondents shall take a sample of the goods covered by the consignment that is now detained, before releasing the goods and the vehicle pursuant to the direction given above.

(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