

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. 21646 of 2015 (E)

PETITIONER :

**M/S. SOUTHERN FAST FOOD COMPANY PRIVATE LIMITED.,
HAVING REGISTERED OFFICE AT 3RD FLOOR, TRANS TOWERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM-14 AND CORPORATE
OFFICE AT 1ST FLOOR, KARUKATHARAYIL PLAZA,
SEAPORT-AIRPORT ROAD, CHITTETHUKARA, KAKKANAD,
KOCHI-682 037, REPRESENTED BY AUTHORISED SIGNATORY,
SHIJU PAPPEN, (VICE- PRESIDENT-OPERAIONS)**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

- 1. COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWER, THIRUVANANTHAPURAM-695 014.**
- 2. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, AMARAVILA-695 014**

BY GOVERNMENT 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:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE LEASE DEED EXECUTED BETWEEN PETITIONER AND KSFDC DATED 14/7/2014.**
- P2 COPY OF THE REGISTRATION CERTIFICATE OF PETITIONER DATED 5/2/2015**
- P3 COPY OF THE RETAIL INVOICE NO.KS/15-16/R1 00139 DATED 23/5/2015**
- P4 COPY OF THE LICENSE AGREEMENT OF M/S. MURALYA HOTELS & RESORTS PVT. LTD. AND M/S. WYNDHAM HOTEL ASIA PACIFIC CO. LTD**
- P5 COPY OF THE NOTICE NO.227/15-16 DATED 5/6/15 ISSUED BY THE 2ND RESPONDENT**
- P6 COPY OF THE REPLY FILED BY THE PETITIONER DATED 8/6/2015 BEFORE THE 2ND RESPONDENT**
- P7 COPY OF THE ORDER NO.OR.227/2015-16 DATED 9/6/2015 OF THE 2ND RESPONDENT**
- P8 COPY OF THE CERTIFICATE ISSUED BY THE CHARTERED ACCOUNTANT DATED 19/6/2015**
- P8(A) COPY OF THE DETAILS DOWNLOADED FROM THE WEBSITE OF MINISTRY OF COMPANY AFFAIRS.**
- P9 COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10/6/2015.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.21646 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.P5 detention notice issued to him detaining a consignment of machinery and parts that was purchased by the petitioner, at the Amaravila check post. 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.P5 detention notice, it is seen that the objection of the respondents is essentially that, while the delivery address shown in the invoice that accompanied the goods was Ramada Hotel (Muralia Group) Palayam

Trivandrum, on a verification of the details available in KVATIS, it was found that the petitioner had no branch or godown at the aforementioned address. It was therefore suspected that the onward movement of the goods, from the check post to the said premises, was pursuant to a sale effected by the petitioner to the person in the said address. Counsel for the petitioner would submit that, the machinery and parts was actually intended for the use of the petitioner and the premises to which it was consigned was the premises of the sister concern of the petitioner and the petitioner wanted to stock the goods at the said premises only because of lack of space in the petitioner's premises.

(ii) I take note of the fact that, the consignment was covered by valid documents as required under the KVAT Act and the petitioner is a registered dealer in the State. There is, however, the discrepancy in the description of the place to which the goods were consigned and the explanation offered by the petitioner has to be examined by the adjudicating authority. I therefore direct the 2nd respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing an amount of 30% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without surety for the balance amount demanded therein before the 2nd respondent.

(iii) The 2nd 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.

(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

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