

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 25TH DAY OF AUGUST 2015/3RD BHADRA, 1937

WP(C).No. 26245 of 2015 (E)

PETITIONER(S):

**WELLINGTON SAMUEL, AGED 40 YEARS,
S/O.M.M.SAMUEL, MANDALATH HOUSE,
EDAKKARA, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.P.A.RAJESH**

RESPONDENT(S):

**THE INTELLIGENCE OFFICER (IB),
DEPARTMENT OF COMMERCIAL TAXES,
KALPETTA, WAYNAD DISTRICT, PIN - 673 121.**

BY GOVERNMENT PLEADER SMT.K.T.LILLY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 26245 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE
PETITIONER AND SUMOD DATED 13.8.2015.**

**EXT.P2: TRUE COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER
AND M/S.SAJITH KANNAN EARTH MOVERS, CUDALLORE, TAMIL NADU
DTD.10.8.2015.**

**EXT.P3: TRUE COPY OF THE DECLARATION GIVEN BY M/S.SAJITH KANNAN EARTH
MOVERS DTD.23.8.2015.**

**EXT.P4: TRUE COPY OF THE FORM 8F DECLARATION ACCOMPANIED WITH THE
CONSIGNMENT DTD.23.8.2015.**

**EXT.P5: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE
RESPONDEWNT DTD.23.8.2015 AS NO.OR.41/2015-16.**

**EXT.P6: TRUE COPY OF THE JUDGMENT DTD.7.8.2015 IN WP(C) NO.23768/2015 OF
THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.26245 of 2015

.....
Dated this the 25th day of August, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P5 notice issued to him, detaining a Hydraulic Excavator 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 for the petitioner and also the learned Government Pleader for the respondent.

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 with regard to the transportation of the goods not being accompanied by valid documents prescribed under the Kerala Value Added Tax Act and Rules. It is also the case of the respondent that the consignee has no branch or declared work site at Ambalavayal and since the consignee

is a dealer in earth moving machines, it was suspected that the transaction in question was essentially a sale of the excavator. Counsel for the petitioner would vehemently deny the allegation that the goods were transported pursuant to a sale. He would rely on the 8F declaration that was submitted, together with the rent agreement that would show that the excavator has been transported in connection with works that were undertaken by the petitioner.

(ii) I note that, although the petitioner is a registered dealer in the State, the transportation of the goods was not accompanied by a delivery note as contemplated under the Kerala Value Added Tax Act and Rules. Under the said circumstances, I direct the respondent to release the excavator to the petitioner on his paying an amount of Rs.1,00,000/- towards the security deposit amount demanded in Ext.P5, and furnishing a simple bond without surety for the balance amount demanded therein, before the respondent.

(iii) 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.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/