IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 26442 of 2015 (E)

PETITIONER :

V.M. ALIYAR, AGED 65 YEARS, PROPRIETOR,
M/S. MAM PLYWOOD INDUSTRIES, KANJIRAKKAD,
RAYONPURAM P.O., PERUMBAVOOR.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS :
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1. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECKPOST,
BANGRA MANESHWAR, KASARGOD - 671323.

2. THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM - 682015.

3. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
TO GOVERNMENT, SECRETARIAT, TAXES DEPARTMENT,
THIRUVANANTHAPURAM - 695001.

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 26442 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE INVOICE NO. 024 DT 24/8/2015.

P2 COPY OF THE DELIVERY NOTE NO. 321512/DN/19705/2015.

P3: COPY OF THE NOTICE NO. 300/9/2015-16 DT 25/8/2015 UNDER SECTION 47(4) OF THE KVAT ACT ISSUED BY R1.

P4: COPY OF THE ADVANCE TAX UTILIZATION RECEIPT DT 24/8/2015.

P5: COPY OF THE JUDGMENT IN WPC NO. 10406 OF 2015 DT 31/3/2015.

P6: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2005-06 (CST) DT 20-02-2014

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.26442 of 2015

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Dated this the 1st day of September, 2015

<u>J U D G M E N T</u>

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P3 detention notice issued to him detaining a consignment of plywood that was being transported 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 tax dues 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.P3 detention notice, it is seen that, the objection of the respondents is essentially that the petitioner was in default of KVAT and CST dues for the assessment year 2005-2006. There is no dispute with regard to the fact that the transportation of the goods in question was duly accompanied by valid documents and also that the

tax liability in respect of the goods that were transported had been duly discharged. Under the said circumstances, I find that the detention as per Ext.P3 notice is not one that is permissible as per the existing statutory provisions. I, therefore, direct the respondents to release the goods and the vehicle on the petitioner producing a copy of this judgment before the 1st respondent.

(ii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns