

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 26639 of 2015 (D)

PETITIONER :

**T.A.NAHAS KHAN,
AREA SALES MANAGER,
M/S. COMFY SHOE MAKERS PVT. LTD.,
M.G.ROAD, ERNAKULAM-682 032.**

**BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY**

RESPONDENT(S):

- 1. THE INTELLIGENCE INSPECTOR,
SQUAD-IV, COMMERCIAL TAXES, ERNAKULAM-682 030**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER, KARAMANA.P.O.,
THIRUVANANTHAPURAM, PIN-695 002**

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER.**
- P2 COPY OF THE 4TH ADDENDUM AGREEMENT DATED 29/05/2014**
- P3 COPY OF THE 6TH ADDENDUM AGREEMENT DATED 26/06/2014**
- P4 COPY OF THE PURCHASE INVOICE NO.TI/RI-01613 DATED 09/10/2014**
- P5 COPY OF THE INVOICE NO.358 DATED 25/07/2014**
- P6 COPY OF THE FORM 15 ONLINE DELIVERY NOTE NO.320716/DN/3432/2015
DATED 17/08/2015**
- P7 COPY OF THE DOWNLOADED ONLINE FORM 16 CERTIFICATE OF OWNERSHIP
NO.5388672135/2015 DATED 14/08/2015**
- P8 COPY OF THE FORM NO.8F DECLARATION NO.32071690124/2015-16/7 DATED
14/08/2015**
- P9 COPY OF THE TRANSFER MEMO NOS.MISC008 DATED 14/08/2015**
- P10 COPY OF THE TRANSFER MEMO NOS.MISC009 DATED 14/08/2015**
- P11 COPY OF THE TRANSFER MEMO NOS.MISC010 DATED 14/08/2015**
- P12 COPY OF THE FORM 17A NOTICE NO.OR 337/15-16 DATED 17/08/2015 ISSUED
BY THE 1ST RESPONDENT TO THE PETITIONER.**
- P13 COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 1ST
RESPONDENT DATED 19/08/2015.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26639 OF 2015 (D)

Dated this the 4th day of September, 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.P12 notice issued to him, detaining a consignment of Air Conditioner, Electric lighting equipments and fixtures, 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 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.

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.P12 detention notice, it is seen that the objection of the respondents is essentially with regard to the disparity in the nature of the transactions as declared in the documents that accompanied the goods and the explanation that was given by the petitioner. The respondents therefore suspected evasion of tax. On a consideration of the submissions made by counsel for the petitioner as well as the Government Pleader, I find that, in the instant case, insofar as there is an ambiguity with regard to the nature of the transaction, the detention by the respondents cannot be said to be illegal.

(ii) Taking note of the fact, however, that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the goods and the vehicle to the petitioner on the petitioner paying 30% of the security deposit amount demanded in Ext.P12 notice and furnishing a simple bond without sureties for the balance amount demanded therein, 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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