IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 26842 of 2015 (E)

PETITIONER :

M/S. DEVI CHEMICALS,
T.C.23/532 (3), KOCHAR ROAD, VALIYASALAI, CHALA.P.O.,
THIRUVANANTHAPURAM-695 036,
REPRESENTED BY ITS MANAGER, ARUN SHAJI.

BY ADVS.SRI.S.SANTHOSH KUMAR
SRI.S.VINODKUMAR

RESPONDENT(S):
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1. THE COMMERCIAL TAX INSPECTOR,
OFFICE OF THE COMMERCIAL TAX OFFICER,
CAMP AT AMARAVILA, THIRUVANANTHAPURAM-695 122

2. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST, AMARAVILA,
THIRUVANANTHAPURAM-695 122.

BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.26842/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE REGISTRATION CERTIFICATE DATED 21/7/2015.
P2	COPY OF THE EXCISE INVOICE DATED 13/4/2015 OF HUNTSMAN
P2(A)	COPY OF THE EXCISE INVOICE DATED 27/6/2015 OF HUNTSMAN
P3	COPY OF THE EXCISE INVOICE DATED 9/7/2015 ISSUED BY M/S. IMCD.
P3(A)	COPY OF THE EXCISE INVOICE DATED 9/7/2015 ISSUED BY M/S.IMCD.
P4	COPY OF THE NOTICE DATED 19/7/2015 OF THE 1ST RESPONDENT
P5	COPY OF THE ANNUAL RETURN FOR THE YEAR 2014-15
P6	COPY OF THE PETITION DATED 4/8/2015 OF M/S. IMCD TO THE COMMISSIONER OF COMMERCIAL TAXES.
P7	COPY OF THE LETTER DATED 18/8/2015 OF THE COMMISSIONER OF COMMERCIAL TAXES
P8	COPY OF THE PETITION DATED 24/8/2015 OF THE PETITIONER TO THE COMMISSIONER OF COMMERCIAL TAXES

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.26842 of 2015

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Dated this the 7th 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.P4 notice issued to him detaining a consignment of Araldite and Hardener 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 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.P4, it is seen that, the objection of the respondents is essentially with regard to the classification of the item in question. The respondents state that the item is taxable at the rate of 14.5% as an adhesive whereas the learned counsel for the petitioner would submit that, the petitioner has been consistently classifying the item as an Epoxy Resin that is

taxable only at 5%. The learned counsel would also submit that, the petitioner has been paying tax and filing returns on the basis of the said classification as an Epoxy Resin and the same has been accepted by the department all these years. He contends that a different yardstick cannot be adopted now in respect of the classification of the product.

(ii) I also take note of the fact that, the petitioner is a registered dealer in the State, and direct the 1st respondent to release the goods and the vehicle on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P4.

(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.

(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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