IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 27069 of 2015 (G)

PETITIONER(S):

S.SREERAJ, PROPRIETOR,
PERFECT EQUIPMENTS & TOOLS,
KANJIRATHINGAL BUILDING,
PARUTHELIPALAM JUNCTION, EDAPPALLY-682024, ERNAKULAM.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT(S):
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1. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, WALAYAR-678555,
   PALAKKAD DISTRICT.

2. **THE COMMERCIAL TAX OFFICER,**
   KVAT CIRCLE-I, KALAMASSERY AT CIVIL STATION,
   KAKKANAD-682030.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 27069 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:	**TRUE COPY OF THE CERTIFICATE OF IREGISTRATION DATED 17/8/15 AND ANNEXURE ISSUED BY R2 TO THE PETITIONER**
EXT.P2:	**TRUE COPY OF THE QUOTATION DATED 8/7/15 SUBMITTED BY PETITIONER TO MATHA COLLEGE OF ENGINEERING & TECHNOLOGY AND PURCHASE ORDER ISSUED BY THEM ON 20/7/15**
EXT.P3:	**TRUE COPY OF INVOICE DATE 14/8/15 ACCOMPANIED WITH THE CONSIGNMENT**
EXT.P4;	**TRUE COPY OF THE TRANSACTION SLIP DATED 14//8/15 ISSUED TO THE PARCSEL AGENCY, VRL LOGISTICS LIMITED**
EXT.P5:	**TRUE COPY OF THE NOTICE ISSUED U/S.47 (2) OF THE KVAT ACT DATED 21//8/15 BY R1 TO THE PETITIONER**
EXT.P6:	**TRUE COPY OF THE REPLY CUM FORM 8F DECLARATION DATED 3/9/15 SUBMITTED BEFORE THE R1.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.27069 of 2015

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Dated this the 8th day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P5 notice issued to him detaining a consignment of wheel alignment and balancer 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.P5 detention notice, it is seen that the objection of the respondents is essentially that the item, that was taxable at 14.5% as per the Schedule to the KVAT Act, was declared by the petitioner as coming

under the 3rd Schedule attracting tax at 5%. Counsel for the petitioner would submit that this was a mistake, and by Ext.P6 communication along with a fresh 8F declaration, he has intimated the respondents that the classification pointed out by them in the detention notice is the correct classification.

(ii) In view of the fact, however, that the petitioner is a registered dealer in the State, I direct the 1st respondent to release the goods and the vehicle to the petitioner, on the petitioner paying tax at the rate of 14.5% on the value of the goods indicated in Ext.P5 detention notice by way of advance tax. The petitioner shall remit the said tax and produce proof of such remittance before the 1st respondent for obtaining the release of the goods.

(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 respondents.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/