

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. 27116 of 2015 (L)

PETITIONER(S):

**BASIL.N.PAUL,
PLAZA, IV/394, OMBALAYIL BUILDINGS,
KOLENCHERRY - 682 311.**

BY ADV. SRI.M.K.SUBHAKARAN

RESPONDENT(S):

**1.THE INTELLIGENCE INSPECTOR
SQUAD NO.II,
COMMERCIAL TAXES AT CHENGANNUR, ALAPPUZHA.
PIN - 689 121.**

**2.THE INTELLIGENCE OFFICER
SQUAD NO.II,
COMMERCIAL TAXES AT CHENGANNUR,
ALAPPUZHA. PIN 689 121.**

**3.THE COMMERCIAL TAX OFFICER,
(WORKS CONTRACT & LUXURY TAX),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY - 682 002.**

R 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:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE CERTIFICATE.

EXT.P2: COPY OF THE PURCHASE ORDER NO.45000002501 DATED 14.8.2015.

EXT.P3: COPY OF THE PURCHASE ORDER NO.4850006751 DATED 29.5.2015.

EXT.P4: COPY OF THE NOTICE UNDER SECTION 47(2).

EXT.P5: COPY OF THE DELIVERY NOTE NO.321510/DN/5689/2015 DATED 31.8.2015.

EXT.P6: COPY OF THE DELIVERY NOTE NO.321510/DN/5691/2015 DATED 31.8.2015.

EXT.P7: COPY OF THE RETURN FOR 2/2015.

EXT.P8: COPY OF THE RETURN FOR 7/2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27116 OF 2015 (L)

Dated this the 8th day of September, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P4 notice issued to him, detaining a consignment of flex board, 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.P4 notice, it is seen that the objection of the respondents is essentially that the

transportation of the goods was not accompanied by an invoice although the declaration of the petitioner was that the transportation was pursuant to a sale. The only document that accompanied the transportation of the goods was a delivery note, which is only one of the prescribed documents under the KVAT Act, and, according to the respondents, if it was a sale, it should have been accompanied by an invoice. Counsel for the petitioner would submit that the sale of the item would be concluded only after the inspection by the purchaser, at the site, and it was under these circumstances that he was not able to raise an invoice. It is also submitted that the petitioner is a registered dealer within the State. I find, however, that insofar as the transaction in question was admittedly a sale, and the transportation was not accompanied by an invoice, as specified under the KVAT Act, the detention, on the part of the respondents, cannot be said to be unjustified.

(ii) Taking note of the fact that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the goods and the vehicle subject to the petitioner paying 20% of the security deposit amount demanded in Ext.P4 notice and furnishing a simple bond without sureties for the balance amount demanded in Ext.P4 notice, 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

prp