IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 27609 of 2015 (A)

PETITIONER(S):

M/S. NEW KABLE POINT,
SANKARAYYAR ROAD JUNCTION,
M.G. ROAD, THRISSUR-680 004,
REPRESENTED BY ITS PARTNER
SMT.REENA JOHNSON.

BY ADVS.SMT.S.K.DEVI,
SRI.SANTHOSH P.ABRAHAM.

RESPONDENT(S):
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1. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST,
   WALAYAR.

2. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAX CHECK POST,
   WALAYAR.

3. THE COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES,
   3RD CIRCLE, THRISSUR.

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 27609 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE INVOICE NO.71 DATED 17/08/2015 ISSUED BY M/S.R.C. INTERNATIONAL, FIROZABAD.
EXT.P1A	COPY OF THE INVOICE NO.72 DATED 17/08/2015 ISSUED BY M/S.R.C. INTERNATIONAL, FIROZABAD.
EXT.P1B	COPY OF THE INVOICE NO.73 DATED 17/08/2015 ISSUED BY M/S.R.C. INTERNATIONAL, FIROZABAD.
EXT.P2	COPY OF THE TRANSACTION SLIP DATED 18/08/2015.
EXT.P3	COPY OF THE MONTHLY RETURN FOR JULY 2015.
EXT.P4	COPY OF THE NOTICE NO.OR/2574/9/15-16 DATED 30/08/2015 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 27609 of 2015

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Dated this the 14th day of September, 2015

JUDGMENT

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 electrical goods that was being transported at the instance of the petitioner. Ext.P4 is the detention notice. 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.

3. On a consideration of the facts and circumstances of the case as also 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 with regard to the fact that the goods that were being transported comprised of goods taxable @5% as well as goods

taxable @14.5%, and the declaration by the petitioner was only in respect of the goods that attracted tax @5% only. The learned counsel for the petitioner submitted that this was a bona fide mistake that was committed and there was no intention to evade payment of tax. Taking note of the said submission, and finding that the transportation of the goods was otherwise in order, and also taking into account the fact that the petitioner is a registered dealer, I direct the 1st respondent to release the goods covered by Ext.P4 detention notice, to the petitioner, on condition that the petitioner remitting the differential tax amount of Rs.29,000/- (Rupees Twenty nine thousand only) as advance tax. The petitioner shall remit the amount and produce proof of such remittance before the 1st respondent, for obtaining the release of goods.

(ii) 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.

(iii) 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

rsr