

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 28962 of 2015 (U)

PETITIONER(S):

P.I.BINOY
PROPRIETOR
EDEN COLLECTIONS
DOOR NO.XI/1342, STATE WAREHOUSE
PATTAMBI ROAD KUNNAMKULAM-680 503
THRISSUR DISTRICT

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENT(S):

1. INTELLIGENCE INSPECTOR, SQUAD NO.II
COMMERCIAL TAX CHECK POST,WALAYAR-678555,
PALAKKAD DISTRICT

2. COMMERCIAL TAX OFFICER
COMMERCIAL TAX CHECK POST
WALAYAR-678555
PALAKKAD DISTRICT

3. THE COMMERCIAL TAX OFFICER (ON DUTY)
COMMERCIAL TAXES
KUNNAMKULAM-680503

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28962 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE INVOICE NO.9581 DATED 16.09.2015 ISSUED BY THE
CONSIGNOR TO THE PETITIONER

EXT.P2:TRUE COPY OF THE FORM 8f DECLARATION ACCOMPANIED WITH THE
CONSIGNMENT

EXT.P3:TREUE COPY OF THE NOTICE FORM NO.17A ISSUED U/S.47(2) DATED 20.09.2015
BY THE 1ST RESPONDENT TO THE PETITIONER

EXT.P4: TRUE COPY OF THE REVISED FORM 8F DECLARATION DATED 22.09.2015
GENERATED ONLINE

EXT.P5: TRUE COPY OF THE REQUEST DATED 22.09.2015 SUBMITTED BEFORE THE 2ND
RESPONDENT BY THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.28962 of 2015

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Dated this the 23rd day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P3 notice issued to him detaining a consignment of toys that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent 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.P3, it is seen that the objection of the respondents is essentially with regard to the classification of the goods that was being transported. It is the stand of the respondents that the goods in question attract tax at the rate of

14.5% whereas the petitioner had declared the goods as taxable @ 5%. Counsel for the petitioner would submit that there is a bonafide classification dispute in respect of the commodity and at any rate, the transportation was duly accompanied by a valid invoice issued in respect of the consignment.

(ii) It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submissions, I direct the 2nd respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P3.

(iii) The 2nd 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 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

