IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29308 of 2015 (K)

PETITIONER(S) :

M/S.PEEJAY AGRO FOODS,
WEST NADA, GURUVAYOOR, REPRESENTED BY ITS
MANAGING PARTNER, C.PADMAKUMAR.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S) :

COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECKPOST,
WALAYAR- 678 624.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 29308 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :
--

EXHIBIT P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER DATED 14.01.2015.

EXHIBIT P2: TRUE COPY OF THE INVOICE NO.312 DATED 14.09.2015.

EXHIBIT P3: TRUE COPY OF THE NOTICE NO.OR.2730/09/15-16 DATED 17.09.2015 ISSUED BY RESPONDENT UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.29308 of 2015

....

Dated this the 29th day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P3 notice issued to him detaining a consignment of printed labels 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 respondent.

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 respondent is essentially that, the petitioner, who was the consignee of the goods, did not have the authorisation under the Central Sales Tax Act to trade in printed labels, and therefore, could not have obtained the printed labels at concessional rate of tax that was collected from him through the invoice that accompanied the transportation. Counsel for the

petitioner would submit that, since he did not have a Central Sales Tax registration to trade in printed labels he did not issue any 'C' forms to the consignor and the payment of tax at concessional rate by the consignor was a mistake for which the authorities in the consignor's State can proceed against the consignor for recovery of the balance tax that is due and payable.

(ii) The petitioner is a registered dealer in various other commodities within the State. Taking note of the said submission of counsel for the petitioner and finding that the consignment was otherwise accompanied by valid documents as contemplated under the Kerala Value Added Tax Act, I direct the 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.P4 detention notice.

(iii) The 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 respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/