IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 29660 of 2015 (F)
--

PETITIONER(S):

SRI.SREEKUMAR M.P.,
(MANAGING PARTNER), M/S.COCHIN FIRETECH,
I FIRST FLOOR, S.N.COMPLEX, LISIE JUNCTION,
COCHIN - 682 018.

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI)

RESPONDENT(S):
----

1. **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY
TO GOVERNMENT, SECRETARIAT,
TRIVANDRUM - 695 001.

2. **THE INTELLIGENCE INSPECTOR, SQUAD NO.II,**
OFFICE OF THE INSPECTING ASST; COMMISSIONER,
(INTELLIGENCE) DEPARTMENT OF COMMERCIAL TAXES,
KOZHIKODE - 673 001.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 29660 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF REGISTRATION CERTIFICATE ISSUED UNDER KVAT OF THE DEALER DTD.30.6.2007.

EXT.P2: TRUE COPY OF LIST OF COMMODITIES AS PER THE CERTIFICATE OF REGISTRATION DTD.30.6.2007.

EXT.P3: TRUE COPY OF BILL NO.401640354 DTD.7.8.2015 ISSUED BY MSA (INDIA) LTD. MUMBAI ALONG BROCHURE OF THE COMPANY SHOWING THE TECHNICAL DETAILS WITH PICTURE OF THE BREATHING APPARATUS.

EXT.P4: TRUE COPY OF DECLARATION IN FORM 8F DD.10.8.2015 OF PETITIONER.

EXT.P5: TRUE COPY OF THE DETENTION NOTICE IN FORM 17A DTD.16.8.2015 BY THE SECOND RESPONDENT.

EXT.P6: REPLY LETTER FILED BY THE PETITIONER DTD.2.9.2015.

EXT.P7(a): SALE BILL NO.0079 DTD.9.4.2015 OF THE PETITIONER.

EXT.P7(b): SALE BILL NO.002450 DTD.11.9.2015 OF THE PETITIONER.

EXT.P7(c): SALE BILL NO.002080 DTD.14.8.2015 OF THE PETITIONER.

EXT.P7(d): SALE BILL NO.00671 DTD.1.6.2015 OF THE PETITIONER.

EXT.P7(e): SALE BILL NO.00227 DTD.22.4.2015 OF THE PETITIONER.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.29660 of 2015

....

Dated this the 30th day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P5 notice issued to him detaining a consignment of breathing apparatus used in fire fighting 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.P5, it is seen that the objection of the respondents is essentially that the goods were shown in the invoice as fire safety equipment whereas in the Form 8F declaration the goods were declared as life saving devices. Counsel for the petitioner would submit that, both

the descriptions suit the product that was transported in that it was a breathing apparatus used in fire fighting exercises.

(ii) It is also pointed out that, the petitioner is a registered dealer in the State and the transportation was covered by a valid invoice as prescribed under the Kerala Value Added Tax Act. Taking note of the said submission, 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.P5 detention notice.

(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/