

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 30095 of 2015 (J)

PETITIONER(S):

**THAKIDIYIL THOMAS VARKEY, PROPERIETOR,
M/S.THAKIDIYEL MARKETING, 38/2535D,
CHEMMATH ROAD, EAR KATHRIVADAVU BRIDGE,
KALOOR P.O., COCHIN-682017.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES CHECK POST,
WALAYAR-678625.**
- 2. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE,
THRIPUNITHURA-682301.**
- 3. COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS, KARAMANA P.O,
THIRUVANANTHAPURAM-695002.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1- TRUE COPY OF REGISTRATION CERTIFICATE DATED 26/3/11 ISSUED UNDER KVAT & CST ACTS BY R2**
- EXHIBIT P2- TRUE COPY OF TAX INVOICE NO.1450 DATED 12/7/15 FOR THE INTERSTATE PURCHASE OF 1008 NOS.OF STAINLESS STEEL CYLINDER ROLLEY**
- EXHIBIT P2(A)- TRUE COPY OF TX INVOICE NO.1451 DATED 12/7/15 FOR THE INTERESTATE PUCHASE OF 192 NOS.OF STAINLESS STEEEL CYLINDER TROLLEY**
- EXHIBIT P3- TRUE COPY OF ONLINE DECLARATION NO.320704/PA/87016/2015 DATED 31/7/15 GENERATED BY PETITIONER WHICH WAS ACCOMPANIED WITH EXT.P2 TAX INVOICE**
- EXHIBIT P3(A)- TRUE COPY OF ONLINE DECLARATION NO.320704/PA/87056/2015 DATED 31/7/15 GENERATED BY PETITIONER WHICH WAS ACCOMPANIED WITH EXT.P2 TAX INVOICE**
- EXHIBIT P4- TRUE COPY OF NOTICE NO.OR.2316/9A/15-16 DATED 1/8/15 ISSUED TO PETITIONER BY R1 THROUGH THE TRANSPORTING AGENCY, DEMANDING SECURITY DEPOSIT ALLEGING MISCLASSIFICATION**
- EXHIBIT P5- TRUE COPY OF REPLY DATED 4/10/15 SENT TO R1 BY E-MAIL ALONG WITH REVISED ONLINE DECLARATION, AGAINST EXT.P4 NOTICE.**
- EXHIBIT P5(A)- TRUE COPY OF REVISED ONINE DECLARATION DATED 4/10/15 IN FORM, NO.8F SUBMITTED BEFORE R1 ALONG WITH EXT;P5 REPLY.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.30095 of 2015

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Dated this the 5th day of October, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P4 notice issued to him detaining a consignment of stainless steel cylinder trolleys 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.P4 detention notice, it is seen that, the objection of the respondents is essentially with regard to the classification of the item. While the petitioner had declared the product as coming under the IIIrd schedule. It is the stand of the respondents that the rate of tax

applicable to the product would be 14.5%. Counsel for the petitioner would submit that, there is a dispute with regard to the classification of the product, and further, the transportation was duly accompanied by the valid documents prescribed under the Kerala Value Added Tax Act.

(ii) It is also submitted by counsel for the petitioner that the petitioner is a registered dealer in the State. Taking note of the said submissions, I direct the 1st respondent to release the goods to the petitioner on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P4.

(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.

(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

mns/

