

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. 30133 of 2015 (N)

PETITIONER(S):

**JOHN NELLIMALA SARAI,
MANAGING PARTNER, M/S. SARAI ASSOCIATES, V/81,
NAD ROAD, NEAR HMT JUNCTION, KALAMASSERY.**

**BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY**

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR, PALAKKAD.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER, KARAMAN 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 THE REGISTRATION CERTIFICATE OF THE PETITIONER**
- EXHIBIT P2- TRUE COPY OF THE RETURN FILED BY THE PETITIONER FOR THE MONTH OF AUGUST, 2015**
- EXHIBIT P3- TRUE COPY OF THE COMMERCIAL INVOICE NO.NB 15-351 DATED 22/9/15 ACCOMPANIED WITH THE CONSIGNMENT**
- EXHIBIT P4- TRUE COPY OF PHOTOGRAPHS OF THE MATERIALS CONTAINED IN THE CONSIGNMENT**
- EXHIBIT P5- TRUE COPY OF THE FORM 8F DECLARATION NO.32071229379/2015-16/443440 DATED 28/9/15**
- EXHIBIT P6- TRUE COPY OF FROM 17A NOTICE NO.OR/605/4//15-16 DATED 29/9/15 ISSUED BY THE R1 TO THE PETITIONER**
- EXHIBIT P7- TRUE COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE R1 DATED 30/9/15**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 30133 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P6 notice issued to him detaining a consignment of Shelves 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 appearing for the petitioner and also the learned Government Pleader appearing for the respondent.

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.P6 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the petitioner had declared the goods, in the invoice as well as in the 8F declaration, as Printed materials, that was taxable at 5%, but on physical verification, the goods were seen to be Shelves, that attract tax at the rate of 14.5%.

Counsel for the petitioner would submit that the material that was transported, was not for commercial purpose. The invoice produced by the petitioner, however, shows that the declaration therein was not clear as to whether it was a shelf or any other material. On a perusal of the photograph of the item, that was being transported, I find that the description in the invoice and in the declaration did not match the product. Under the said circumstances, although the petitioner is a registered dealer in the State, I direct the 1st respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petitioner paying 30% of the security deposit amount demanded and furnishing a simple bond without sureties for the balance security deposit amount demanded in the notice, before the 1st respondent.

(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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE