**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937**

**WP(C).No. 30455 of 2014 (F)**

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**PETITIONER(S):**

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**ABDUL NAZER.P.T.**
**PROPRIETOR, ATHANIKKAL SANDS, K.P.BUILDING**
**TP 15/374, THUVOOR PANCHAYATH, THUVOOR P.O.**
**PIN-679327, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.RAJU JOSEPH (SR.)**
**SRI.P.SAMSUDIN**

**RESPONDENT(S):**

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1. **STATE OF KERALA**
   **REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT**
   **GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**

2. **THE COMMISSIONER,**
   **COMMERCIAL TAXES DEPARTMENT**
   **THIRUVANANTHAPURAM-695001.**

3. **THE DEPUTY COMMISSIONER,**
   **COMMERCIAL TAXES DEPARTMENT, KASARAGODE-671123.**

4. **THE COMMERCIAL TAXES INSPECTOR,**
   **COMMERCIAL TAXES CHECK POST, MANJESWAR-671323**
   **KASARGODE DISTRICT.**

5. **DEPUTY SUPERINTENDENT OF POLICE,**
   **KASARGODE-671123.**

6. **THE SUB INSPECTOR OF POLICE,**
   **MANJESWAR-671323, KASARGODE.**

**R1-R6 BY GOVERNMENT PLEADER SRI.R.RANJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).No. 30455 of 2014 (F)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**EXT.P1: COPY OF THE CERTIFICATE OF REGISTRATION DATED 20.7.13 ISSUED BY THE COMMERCIAL TAXES DEPARTMENT.**
**EXT.P2: COPY OF THE GOVERNMENT ORTDER [M.S]NO.161/09/ID DATED 14.12.09.**
**EXT.P3: COPY OF THE AFFIDAVIT OF V.MRALI MOHAN.**
**EXT.P4: COPY OF THE GOVERNMENT ORDER NO.58289/P3/2010/REVENUE DATED 11.11.2010.**
**EXT.P5: COPY OF THE CIRCULAR NO.09/2013 DATED 31.5.2013 ISSUED BY THE COMMERCIAL TAXES DEPARTMENT.**
**EXT.P6: COPY OF THE TAX INVOICE DATED 7.11.2014.**
**EXT.P7: COPY OF THE ADVANCE TAX PAYMENT RECEIPT DATED 9.11.2014.**
**EXT.P8: COPY OF THE DELIVERY NOTE DATED 9.11.2014.**
**EXT.P9: COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT U/S 47(2) OF KVAT ACT.**
**EXT.P10: COPY OF THE INTERIM ORDER IN IA NO.11574/2014 IN WPC NO.22084/2014.**
**EXT.P11: COPY OF THE RECEIPTS DATED 11.11.2014 PAYMENT OF SECURITY DEPOSIT.**

**RESPONDENT(S)' EXHIBITS: NIL.**
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**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.30455 OF 2014 (F)**

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**Dated this the 31st day of August, 2015**

**<u>J U D G M E N T</u>**

The petitioner is a registered dealer in construction materials holding valid registration under the Kerala Value Added Tax Act and the Central Sales Tax Act. A consignment of river sand that was brought by the petitioner from Maharashtra was detained at the check post on the ground that the consignment was not accompanied by valid documents under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and Kerala Minor Mineral Concession Rules, 1967. There was no dispute with regard to the consignment being accompanied by the relevant documents as prescribed under the KVAT Act and Rules.

2. When the writ petition came up for admission, this Court, after affording time to the Government Pleader for getting instructions, by an interim order dated 2.2.2015, directed the respondents not to detain goods carriage vehicles and consignments of river sand transported by the petitioner interstate, so long as they

were accompanied by documents specified in Section 46(3) of the KVAT Act and Rule 66 of the KVAT Rules, pending final disposal of the writ petition. The said interim order continues to be in force even today and the petitioner has been transporting consignments of river sand on the strength of the said interim order.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and also taking note of the fact that the jurisdiction of the authorities under the KVAT Act is only to ensure compliance with the provisions under the said Act and Rules, I dispose the writ petition by making the interim order dated 2.2.2015 absolute, and making it clear that if there is any violation of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, Kerala Minor Mineral Concession Rules, 1967 or Kerala Minor Mineral Concession Rules, 2015, the detention, if any, required on that score can be made only at the instance of the police authorities in the State or the authorities under the respective enactments.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

prp