IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 30336 of 2015 (N)

PETITIONER(S) :

MARIYAMMA, AGED 55 YEARS,
W/O.JOY, PROPRIETRIX, WEST COAST, NO.11.345,
MASJID ROAD, KOKKALAI, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S) :
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM- 695 001.

2. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, BANGRA MANJESHWAR,
   KASARAGOD- 671 111.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 30336 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE VAT REGISTRATION OF THE PETITIONER DATED 21.03.2014.

EXHIBIT P2: A TRUE COPY OF THE CENTRAL SALES TAX REGISTRATION DATED 21.03.2014.

EXHIBIT P3: A TRUE COPY OF THE INVOICE DATED 12.08.2015.

EXHIBIT P4: A TRUE COPY OF THE RETAIL INVOICE DATED 27.08.2015 OF THE PETITIONER.

EXHIBIT P5: A TRUE COPY OF THE RETAIL INVOICE DATED 25.08.2015 OF THE PETITIONER.

EXHIBIT P6: A TRUE COPY OF THE INVOICE RAISED IN THE NAME OF THE PETITIONER DATED 30.09.2015.

EXHIBIT P7: A TRUE COPY OF THE NOTICE AND THE ANNEXURE DATED 04.10.2015.

EXHIBIT P8: A TRUE COPY OF THE DECLARATION DATED 03.10.2015.

EXHIBIT P9: A TRUE COPY OF THE RETURN DATED 17.09.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 30336 of 2015
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Dated this the 6th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P7 notice issued to him detaining a consignment of Plastic Films, Sheets and Foils in rolls that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondents 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 respondents.

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.P7 notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item under transportation. While the petitioner classified the item as taxable at 5%, the respondents take the stand that the item is

taxable at 20%. There is no dispute with regard to the fact that the transportation of the goods was accompanied by valid documents as contemplated under the KVAT Act. The petitioner is also a registered dealer in the State. Taking note of the said facts, and finding that the transportation of the goods was otherwise in order, and also taking into account the fact that the petitioner is a registered dealer, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the notice, before the 2nd respondent.

(ii) 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das