IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 30671 of 2015 (H)

PETITIONER:

BIJESH.G, AGED 30 YEARS,
S/O.GANESH KUMAR,MANAGING PARTNER,
SOUTHERN HYDRAULICS, 15/317(2),
NEAR ST.SEBASTIAN SCHOOL, PALAYAPETA, PALAKKAD-1.

BY ADV. SRI.S.MURALI

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

2. COMMERCIAL TAX OFFICER, 2ND CIRCLE,
   DEPARTMENT OF COMMERCIAL TAXES,
   PALAKKAD - 678 001.

3. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST,
   WALAYAR, PALAKKAD - 678 001.

4. ACE PNEUMATICS, PLOT NO.G126,
   NIMBLAK, MIDC, AHMEDNAGAR,
   MAHARASHTA STATE - 700 080.

R1 TO R3 BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 30671 of 2015 (H)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 :	**TRUE PHOTOCOPY OF THE TAX INVOICE OF THE 4TH RESPONDENT NO.450 DATED 18.9.2015.**
EXT. P2 :	**TRUE PHOTOCOPY OF THE TRANSATION SLIP ISSUED TO VRL LOGISTICS LTD WITH CONSIGNEE NAME AS PETITIONER DATED 18.9.2015.**
EXT. P3 :	**TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE CLARIFICATORY AUTHORITY UNDER SECTION 94 OF THE KVAT ACT 2003 ORDER NO.C3/14168/08/CT DATED 23.6.2010.**
EXT. P4 :	**TRUE PHOTOCOPY OF NOTICE ISSUED IN FORM 17-A UNDER SECTION 47 (2) OF THE KVAT ACT NO.2889/10-A/15-16 DATED 30.9.2015 ISSUED BY 3RD RESPONDENT.**
EXT. P5 :	**TRUE PHOTOCOPY OF THE OBJECTION/EXPLANATION OFFERED BY THE PETITIONER TO 3RD RESPONDENT DATED 7.10.2015.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 30671 of 2015

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Dated this the 9th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 notice issued to him detaining a consignment of Hydraulic Break-up Piston 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.P4 notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item for the purposes of taxation. While the petitioner had declared the goods as taxable at 5%, the respondents maintain

that the goods would attract tax at 14.5%. Counsel for the petitioner submits that pursuant to Ext.P3 clarification order, it is clear that the item would attract tax at 4%. It is also stated that the petitioner is a registered dealer and the transportation of the commodity was duly accompanied by the documents prescribed under the KVAT Act. Taking note of the said submission, 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 3rd 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 3rd respondent.

(ii) The 3rd 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 3rd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das 09.10.15