

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. 30685 of 2015 (I)

PETITIONER(S) :

**SHAYIN ISMAIL,
KORAMBAYIL HOUSE, MANJERI (P.O),
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI**

RESPONDENT(S) :

**COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR- 678 624.**

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:**

Msd.

WP(C).No. 30685 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF SALE DEED 2731/2013 DATED 01.06.2013 OF SRO CHENGAMANAD.

EXHIBIT P2: TRUE COPY OF RECEIPT DATED 01.10.2015 INRESPECT OF BUILDING TAX PAYMENT.

EXHIBIT P3: TRUE COPY OF INVOICE NO.330 DATED 04.10.2015 AND FORM JJ ISSUED BY M/S.STANLEY BOUTIQUE, CHENNAI TO THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE PRINT OUT OF THE UPLOADED CERTIFICATE OF OWNERSHIP BEARING NO.7539235166/2015.

EXHIBIT P5: TRUE COPY OF THE NOTICE IN FORM 17A OR NO.635/15-16 DATED 06.10.2015 ISSUED BY THE RESPONDENT.

EXHIBIT P6: TRUE COPY OF REPLY FILED ON 07.10.2015 FILED BY PETITIONER BEFORE THE RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 30685 of 2015

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.P5 notice issued to him detaining a consignment of furniture 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.P5 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the goods that were being transported were covered by a Form-16 ownership certificate, that was issued in the name of Sri.Firos, Saffron Builders, whereas, the apartment in question , where the furniture was to be offloaded, belonged to the

petitioner. The respondent therefore, suspected an evasion of tax, since it was evident that the goods were not meant for the own use of the person, who had submitted the Form-16 declaration. Counsel for the petitioner would submit that the person, who submitted the Form-16 declaration, was acting on behalf of the petitioner, while issuing the said declaration. It is also stated that the relevant documents as per the KVAT Act, accompanied being the transportation of the goods. Taking note of the said submission, and finding that the ownership certificate was not in the name of the petitioner, I direct the 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 in Ext.P5 detention notice and on furnishing a simple bond without sureties for the balance security deposit amount demanded in the notice, before the respondent.

(ii) The 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 respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE