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. 30853 of 2015 (F)

PETITIONER :

M/S. POPULAR MOTOR CORPORATION,
NH BYE PASS, VYTTILA, KOCHI,
REPRESENTED BY ITS AUTHORISED SIGNATORY,
K.K.KRISHNAKUMAR

BY ADVS.SMT.S.K.DEVI
SRI.SHANMUGHAM D. JAYAN

RESPONDENT(S):
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1. **THE INTELLIGENCE INSPECTOR,**
   SQUAD NO.VII, DEPT. OF COMMERCIAL TAXES,
   KOLLAM AT KOTTARAKKARA, PIN-691 506

2. **THE ASST. COMMISSIONER (ASSMT),**
   DEPT. OF COMMERCIAL TAXES, SPL. CIRCLE-III,
   ERNAKULAM, PIN-682 015

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:

sts

WP(C).NO.30853/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE NOTICE OR NO.412/2015-16 DATED 7/10/2015
P2	COPY OF THE INVOICE NO.71 DATED 24/08/2015
P2(A)	COPY OF THE POLICY CUM SCHEDULE CERTIFICATE
P2(B)	COPY OF THE REGISTRATION DETAILS ISSUED BY THE MOTOR VEHICLE DEPARTMENT, KERALA
P3	COPY OF THE CERTIFICATE OF REGISTRATION NO.32070408164C

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 30853 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.P1 notice issued to him detaining a consignment of two JCB vehicles 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.P1 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the transportation of the goods was not accompanied by any valid documents that was prescribed under the KVAT Act. Counsel for the

petitioner would submit that the vehicles in question were demo vehicles, which were being brought back from the premises where they were displayed and therefore, there was no liability to tax. It is pointed out however, that in respect of one vehicle, the petitioner had already sold the vehicle to the Manager of the Company and obtained registration under the Motor Vehicles Act in his name. As regards the other vehicle, it is stated that the vehicle has not been sold and the ownership continues to be with the petitioner. Taking note of the said submission and the fact that the petitioner is a registered dealer within 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 producing proof of payment of tax in respect of the first vehicle as also proof of payment of tax, as advance tax, in respect of the second vehicle, before the 1st respondent and also on 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

das 09.10.15