

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 31016 of 2015 (B)

PETITIONER :

**BINDU REJI, W/O.REJI THOMAS, AGED 46 YEARS,
PROPRIETRESS, M/S. NIKSON PLY AND VENEERS,
PERUMBAVOOR, RESIDING AT THODATHIL HOUSE,
PULLUVAZHYP.O., PERUMBAVOOR, PIN-683 541**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT :

**THE COMMERCIAL TAX INSPECTOR,
THE COMMERCIAL TAX CHECK POST, BANGARA,
MANJESHWAR, KASARGOD, PIN-671 323**

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.31016/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER UNDER THE KVAT ACT DATED 7/7/2008 ON THE FILES OF THE COMMERCIAL TAX OFFICER, SECOND CIRCLE, PERUMBAVOOR.**
- P2 COPY OF THE DETENTION NOTICE BEARING NO.OR 32/15-16 (826/15-16) DATED 10/10/2015 ISSUED BY THE RESPONDENT TO THE PETITIONER DETAINING THE GOODS TRANSPORTED.**
- P3 COPY OF THE INVOICE NO.27 ISSUED BY THE PETITIONER DATED 9/10/2015 IN FAVOUR OF M/S SUBH MARKETING, KARAD.**
- P4 COPY OF THE ADVANCE TAX UTILISATION RECEIPT IN FORM NO. 8F DATED 9/10/2015 ISSUED IN FAVOUR OF THE PETITIONER.**
- P5 COPY OF THE DOWNLOADED ONLINE DELIVERY NOTE NO.321513/DN/28396/2015 DATED 9/10/2015 OBTAINED BY THE PETITIONER.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31016 OF 2015 (B)

Dated this the 12th day of October, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P2 notice issued to her, detaining a consignment of flush doors, 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 and the submissions made across the Bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P2 notice, it is seen that the objection of the respondent is essentially that the

goods under transportation were found to be flush doors, but as per the E-declaration and delivery note in Form 15, the goods were seen declared as plywood. The respondent therefore suspected evasion of tax. Counsel for the petitioner would submit that although in the E-declaration as also the delivery note, the goods are seen declared as plywood, the same was done so as to enable the petitioner to pay advance tax in respect of the flush doors although it was not required to be done. It is pointed out that in the E-declaration and the delivery note, reference is made to the invoice, wherein the goods are referred to as 'flush doors'. It is therefore contended that there was no attempt at evasion of tax because the rate of tax in respect of flush doors and plywoods is the same within the State. Taking note of the said submission and the fact that the petitioner is a registered dealer within the State, and further that the transportation of the goods was accompanied by valid documents, I direct the respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P2 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, untrammelled by the

observations in this judgment.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

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