IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 31201 of 2015 (A)

PETITIONER(S) :

D.KANNAN, PROPRIETOR,
SREE SELVA GANAPATHI MILK PRODUCTS,
KOTTAYIL ROAD, KUNNAMKULAM, THRISSUR DISTRICT- 680 503.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :
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1. **INTELLIGENCE INSPECTOR,**
   COMMERCIAL TAXES, SQUAD NO.IV, THRISSUR- 680 004.

2. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES, KUNNAMKULAM- 680 503.

3. **COMMISSIONER OF COMMERCIAL TAXES,**
   TAX TOWER, KARAMANA P.O., THIRUVANANTHAPURAM- 695 022.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 31201 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF REGISTRATION CERTIFICATE DATED 14.08.2007 ISSUED TO THE PETITIONER UNER THE KVAT AND CST ACTS BY 2ND RESPONDENT.**

EXHIBIT P2: **TRUE COPY OF INVOICE NO.192 DATED 24.09.2015 RAISED BY M/S.INTERNATIONAL TRADING CO; SANGLI, MAHARASHTRA, ON THE PETITIONER, FOR THE SALE OF CAMPHOR.**

EXHIBIT P3: **TRUE COPY OF RAILWAY RECEIPT NO.575053 DATED 25.09.2015 ISSUED BY CENTRAL RAILWAY AT THE TIME OF BOOKING THE GOODS AS PER EXT.P2 TAX INVOICE.**

EXHIBIT P4: **TRUE COPY OF ONLINE FORM NO.8FA DATED 29.09.2015 GENERATED BY PETITIONER ON ARRIVAL OF GOODS FOR TRANSPORTING GOODS FROM THRISSUR RAILWAY STATION.**

EXHIBIT P5: **TRUE COPY OF LETTER DATED 29.09.2015 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT, FOR RELEASE OF GOODS, TAKEN FROM PLATFORM OF THRISSUR RAILWAY STATION.**

EXHIBIT P6: **TRUE COPY OF NOTICE DATED 30.09.2015 U/S.47(2) OF KVAT ACT ISSUED BY 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT YU/S.47(2) OF KVAT ACT, ON CAMPHOR.**

EXHIBIT P7: **TRUE COPY OF DETAILED REPLY DATED 01.10.2015 SUBMITTED BY PETITIONER, AGAINST EXT.P6 NOTICE, BEFORE 1ST RESPONDENT.**

EXHIBIT P7(A): **TRUE COPY OF CIRCULAR NO.12/2011 DATED 13.07.2011 ISSUED BY 3RD RESPONDENT, WHERE BY PRESCRIBED PROCEDURE TO TRANSPORT GOODS THROUGH RAIL, BY PRESCRIBING ONLINE GENERATION OF FORM NO.8FA, WHEREBY REQUIREMENT OF SIGNATURE OF JURISDICTIONAL ASSESSING AUTHORITY AVOIDED.**

EXHIBIT P8: **TRUE COPY OF LETTER DATED 03.10.2015, COMMUNICATED TO THE PETITIONER ON 08.10.2015, BY 1ST RESPONDENT , PURSUANT TO EXT.P7 REPLY TO PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 31201 of 2015
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Dated this the 14th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P6 notice issued to him detaining a consignment of Camphor 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.P6 notice, it is seen that the objection of the respondent is essentially with regard to the documents that accompanied the transportation, the respondents contending that the 8FA declaration was generated in the KVAT's website, only after the detention of the goods. Counsel for the petitioner would submit that the

transportation was duly accompanied by a valid invoice, which is taken note of in the detention notice, issued by the respondents and further the 8FA declaration was generated as soon as the petitioner had details regarding the vehicle and the driver that was entrusted with the transportation of the goods after clearing the goods from the Railway authorities. It is also stated that the petitioner is a registered dealer in the State. 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 1st 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 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/ 14.10.15