

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. 31286 of 2015 (I)

PETITIONER :

**M/S.ICOMM TELE LTD, SIVADAS BHAVAN,
281A-29311-25, THEKUMBAGHAM PANAKELTEMPLE ROAD,
NEAR OEN, THIRIPUNITHUR, ERNAKULAM 682301,
REPRESENTED BY IT'S SENIOR EXECUTIVE
SMT. SREEREKHA K.S., AGED 35 YEARS.**

BY ADV. SMT.K.LATHA

RESPONDENTS :

- 1. THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANDAPURAM - 695001.**
- 2. ASSISTANT COMMISSIONER (WORKS CONTRACT),
COMMERCIAL TAXES, ERNAKULAM - 682019.**
- 3. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR - 678103.**

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:**

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APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF DELIVERY CHALLAN SL. NO. 2408 DT 21/7/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 22ND JULY 2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 22ND JULY 2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 22ND JULY 2015 SHOWING PETITIONER AS THE CONSIGNER.
- P1(A): COPY OF DELIVERY CHALLAN SL. NO. 2409 DT 22/7/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 23RD JULY 2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 23RD JULY 2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 23RD JULY 2015 SHOWING PETITIONER AS THE CONSIGNER.
- P1(B): COPY OF DELIVERY CHALLAN SL. NO. 2411 DT 23/7/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 24TH JULY 2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 24TH JULY 2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P.LTD, BANGALORE DT 24TH JULY 2015 SHOWING PETITIONER AS THE CONSIGNER.
- P1(C): COPY OF DELIVERY CHALLAN SL. NO. 2412 DT 27/7/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 27TH JULY 2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 27TH JULY 2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 29TH JULY 2015 SHOWING PETITIONER AS THE CONSIGNER.
- P1(D): COPY OF DELIVERY CHALLAN SL. NO. 2413 DT 3-08-2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 03-08-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 03-08-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 03-08-2015 SHOWING PETITIONER AS THE CONSIGNER.
- P1(E): COPY OF DELIVERY CHALLAN SL. NO. 2415 DT 07/08/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 07-08-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 07-08-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 07-08-2015 SHOWING PETITIONER AS THE CONSIGNER.

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- P1(F): COPY OF DELIVERY CHALLAN SL. NO. 2416 DT 08/08/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 10-08-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 10-08-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 10-08-2015 SHOWING PETITIONER AS THE CONSIGNER.**
- P1(G): COPY OF DELIVERY CHALLAN SL. NO. 2417 DT 12/08/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 12-08-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 12-08-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 12-08-2015 SHOWING PETITIONER AS THE CONSIGNER.**
- P1(H): COPY OF DELIVERY CHALLAN SL. NO. 2418 DT 03/09/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 04-09-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 04-09-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 04-09-2015 SHOWING PETITIONER AS THE CONSIGNER.**
- P1(I): COPY OF DELIVERY CHALLAN SL. NO. 2396 DT 07/04/2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P. LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DT 07-04-2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DT 07-04-2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S. JOSH TECH SERVICES P. LTD, BANGALORE AND E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P. LTD, BANGALORE DT 06-04-2015 SHOWING PETITIONER AS THE CONSIGNER.**
- P2: COPY OF THE DETAILS OF GOODS LIST REPAIRED BACK**
- P3: COPY OF THE DECLARATION AND DELIVERY NOTE NO.JTS/OK/ICOMM/181 DT 19/9/2015 AND THE DECLARATION AND DELIVERY NOTE NO. JTS/CA/ICOMM/91 DT 19/9/2015.**
- P4: COPY OF FORM NO. 8F DECLARATION DT 22ND SEPTEMBER 2015 DECLARING BOTH THE P3 DELIVERY NOTE DECLARATIONS.**
- P5: COPY OF FORM 15 DELIVERY NOTE DT 22ND SEPTEMBER 2015 DECLARING P3 DELIVERY NOTE INVOICE 91 AND ANOTHER FORM 15 DELIVERY NOTE DT 22ND SEPTEMBER 2015 DECLARING P3 DELIVERY NOTE INVOICE 181.**
- P6: COPY OF TRANSACTION SLIP DT 22/9/2015 DECLARING P3 DELIVERY NOTE INVOICE 181 AND ANOTHER TRANSACTION SLIP DATED 22/9/2015 DECLARING P3 DELIVERY NOTE INVOICE 91.**
- P7: COPY OF THE DETENTION NOTICE NO. OR 2825/9A/15-16 DT 24/9/2015 ISSUED BY THE R3 TO THE PETITIONER IN FORM NO. 17A UNDER SECTION 47(2) OF THE KVAT ACT.**

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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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.P7 notice issued to him detaining a consignment of electronic goods 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.P7 notice, it is seen that the objection of the respondent is essentially with regard to the non production of any materials to support the contention of the petitioner that the items under transportation were goods, that were returned to the petitioner after repair at Bangalore. Counsel for the

petitioner would produce material in the writ petition to substantiate the facts that the goods were being returned after repair at Bangalore and that the onward transportation from Ernakulam to Bangalore was also covered by delivery notes, details of which are produced in the writ petition. It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submission, but finding that the respondents cannot be faulted for detaining the goods in the absence of any material that was available before them to indicate that it was the same goods, that were transported on an earlier occasion, that were being returned after repaired, I direct the 3rd 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.P7 and furnishing a simple bond without sureties for the balance 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

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judgment and a copy of the writ petition before the
3rd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das/ 14.10.15