IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 31433 of 2015 (D)

PETITIONER:

M/S.PLAYWELL SPORTS,
MARKET ROAD, ERNAKULAM,
REPRESENTED BY ITS PROPRIETOR,
CHENTHAMARAKSHAN.

BY ADVS.SMT.S.K.DEVI
SMT.P.K.MAYA DEVI

RESPONDENT(S):

1.THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR - 678 625.

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

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 31433 of 2015 (D)

<u>APPENDIX</u>

<u>PETITIONER'S EXHIBITS:</u>

EXT. P1 : TRUE COPY OF THE NOTICE NO.OR/2990/10/15-16 DATED 10.10.2015.

EXT. P2 : TRUE COPY OF THE INVOICE NO.1759 DATED 23.9.2015.

EXT. P3 : TRUE COPY OF 8F DECLARATION.

EXT. P4 : TRUE COPY OF THE ANNUAL RETURN FOR THE YEAR 2014-15.

<u>RESPONDENTS' EXHIBITS</u>: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31433 OF 2015 ( )

Dated this the 15th day of October, 2015

<u>J U D G M E N T</u>

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P1 notice issued to him, detaining a consignment of gloves used in sports and sports goods, that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondents 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 respondents.

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.P1 notice, it is seen that the objection of the respondents is essentially that the

petitioner had misclassified the goods. While the petitioner had classified the goods as “sports goods coming under the IIIrd Schedule”, the respondents were of the view that the goods merited classification as a commodity that attracted tax @ 14.5%. The respondents therefore suspected an evasion of tax. Counsel for the petitioner would submit that the petitioner is a registered dealer within the State and that the transportation of the goods was under cover of valid documents as contemplated under the KVAT Act. Taking note of the said submission, I direct the 1st 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.P1 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, 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 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/15/10/15