

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. 31513 of 2015 (L)

PETITIONER(S):

**M/S.RVR AND CO.,
RESIDENCY PLAZA, 5TH FLOOR,
NO.41/42, RESIDENCY ROAD, BANGALORE 560025
REPRESENTED BY ITS GENERAL MANAGER MR.GIRISH BBU P.L.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

**1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.**

**2.THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES, COMMERCIAL TAX CHECK POST,
WALAYAR.**

R 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:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF CONFIRMATION AGREEMENT NO.E1/4147/2015/GCDA DATED 01/09/2015 ISSUED BY THE SECRETARY OF GREATER COCHIN DEVELOPMENT AUTHORITY (GCDA), COCH THE PETITIONER COMPANY.

EXT.P2: COPY OF THE INVOICE NO.RVRGCDA/111015/003 DATED 11TH OCTOBER 2015 ISSUED BY THE PETITIONER TO GREATER COCHIN DEVELOPMENT AUTHORITY (GCDA).

EXT.P3: COPY OF THE DETENTION NOTICE NO.OR 664/9/2015-16/4 DATED 13.10.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVATACT TO THE CONSIGNEE GREATER COCHIN DEVELOPMENT AUTHORITY (GCDA).

EXT.P4: COPY OF THE LETTER ISSUED BY GREATER COCHIN DEVELOPMENT AUTHORITY (GCDA) DATED 14TH OCTOBER, 2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31513 OF 2015 (L)

Dated this the 15th day of October, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P3 notice issued to him, detaining a consignment of HDPE Pontoons, HDPE nut/bolts and HDPE pins, 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.P3 notice, it is seen that the objection of the respondents is essentially that the transportation of the goods was not accompanied by any of the valid documents contemplated under the KVAT Act. While there was an invoice that supported the transportation, the contention of the petitioner that the goods in question were required for the own use of the consignee was not substantiated through the production of a Form 16 certificate of ownership of the consignee. The respondents also have a dispute with regard to the concessional rate of tax paid on the item. Counsel for the petitioner would submit that, by Ext.P4 letter, the consignee has indicated that the goods are required for his own use. The petitioner however is not a registered dealer within the State. Under the said circumstances, I direct the 2nd respondent to release the goods and the vehicle subject to the petitioner paying 50% of the security deposit amount demanded in Ext.P3 and furnishing a simple bond without sureties for the balance amount demanded in Ext.P3 notice, before the 2nd respondent.

(ii) The 2nd 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 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/15/10/15