

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 31560 of 2015 (T)

PETITIONER(S):

**M/S. MUTHOOT MOTORS (COCHIN),
MUTHOOT TOWERS, M.G. ROAD, COCHIN,
REPRESENTED BY K.C. GEORGE,
SENIOR GENERAL MANAGER (FINANCE).**

**BY ADVS.SRI.P.S.SOMAN,
SMT.T.RADHAMANY.**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER,
KARAMANA P.O., THIRUVANANTHAPURAM-695 002.**

BY GOVT. PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER.
- EXT.P2 COPY OF THE RETURN FILED BY the PETITIONER FOR THE MONTH OF AUGUST 2015.
- EXT.P3 COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE MH 01 BY 8540.
- EXT.P4 COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE MH 01 BY 9305.
- EXT.P5 COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE MH 04 GE 3910.
- EXT.P6 COPY OF THE ONLINE DELIVERY NOTE NO.320703/DN/122641/2015 DATED 12/10/2015.
- EXT.P7 COPY OF THE FORM 8F DECLARATION DATED 12/10/2015.
- EXT.P8 COPY OF THE LETTER OF THE CONSIGNER DATED 05/10/2015.
- EXT.P9 COPY OF THE FORM 17A NOTICE NO.OR/02/NG/2015-16 DATED 12/10/2015 ISSUED BY THE 1ST RESPO
- EXT.P10 COPY OF THE EXPLANATION DATED 13/10/2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P11 COPY OF THE REPLY GIVEN BY THE COMMERCIAL TAX OFFICER (DUTY) DATED 14/10/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 31560 of 2015

Dated this the 16th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P9 notice issued to him detaining a consignment of Motor Cars 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.P9 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the goods that belonged to the

consignor were being brought for demonstration purposes to the premises of the consignee, and there was no valid document, except a delivery note, that accompanied the transportation of the goods. It is stated that when the consignment reached the Check-post, the petitioner had produced a delivery note together with an 8F declaration, which showed that the goods were being transported for exhibition purposes, but there was no document that was produced to show that the consignor/petitioner had a permission for exhibition/display purposes. In particular, there was no compliance with the procedure required to be followed as per Section 16 (13) of the KVAT Act. It is under these circumstances, that the respondents detained the goods and issued Ext.P9 notice. Counsel for the petitioner would submit that the goods were being brought solely for demonstration purposes and there was an undertaking given that the vehicles would be returned after the period of demonstration. I note however, that this is a case where the necessary documents that had to accompany the transportation were not there, and therefore, notwithstanding the fact that the petitioner herein, who is the consignee of the goods, is a registered dealer in the State, I direct the 1st respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petitioner furnishing a bank guarantee for the security deposit amount demanded in the notice, before the 1st respondent.

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(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 /16.10.15