

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. 31575 of 2015 (V)

PETITIONER(S):

**R.RADHAKRISHNAN,
RADHAKRISHNA HANDLOOM TAXILES,
KMC XII/210, MUNICIPAL BUILDING, M.I.ROAD,
KOTTAYAM, PIN-686002.**

**BY ADVS.SRI.R.MURALIDHARAN (AROOR)
SRI.IVANS C. CHAMAKKAL**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER,
KVAT SECOND CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,
KOTTAYAM, PIN-686575.**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, ALAYAR,
PALAKKAD DISTRICT, PIN-678625.**
- 3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAX CHECK POST, WALAYAR,
PALAKKAD DISTRICT, PIN-678625.**

BY GOVERNMENT 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:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE R1 UNDER KVAT ACT DATED 30/5/2007**
- P2: TRUE COPY OF THE INVOICE NO.5522 DT.2/9/15 ATTACHED WITH THE CONSIGNMENT**
- P3: TRUE COPY OF THE NOTICE ISSUED BY THE R2 UNDER S.47(2) DATED 16/9/15**
- P4: TRUE COPY OF THE INVOICE NO.9405 DATED 14/9/15 ATTACHED WITH THE CONSIGNMENT**
- P5: TRUE COPY OF THE NOTICE ISSUED BY THE RW UNDER SEC.47(2) DATED 29/9/15**
- P6: TRUE COPY OF THE ANNUAL RETURN FILED BY THE PETITIONER FOR THE YEAR 2014-15 DATED 26/6/15**
- P7: TRUE COPY OF THE RETURN FILED FOR THE MONTH OF AUGUST, 2015 DATED 22/9/15.**

RESPONDENTS' EXHIBIT

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31575 OF 2015 (V)

Dated this the 16th day of October, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P3 and P5 notices issued to him, detaining two consignments of hand loom bed sheets, pillow covers etc., that were 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 notices 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 Exts.P3 and P5 notices, it is seen that the objection of the respondents is essentially with regard to the classification of the item. While the

petitioner, based on the invoice of the supplier, had classified the item as hand loom taxable @ 1%, the respondents took the view that the item would attract tax @ 5%.

(ii) Taking note of the fact that the petitioner is a registered dealer within the State, and that the transportation of the goods was duly accompanied by valid documents under the KVAT Act, I direct the 2nd respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Exts.P3 and P5 notices, before the 2nd respondent.

(iii) 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.

(iv) 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