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. 31711 of 2015 (L)

PETITIONER(S):

M/S CRUST 'N' CRUMB INGREDIENTS PVT. LTD.,
BLOCK-32, KINFRA SMALL INDUSTRIES PARK,
NELLAD P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT,
PIN - 686 721, REPRESENTED BY ITS DIRECTOR
NOUSHAD NAINA M.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT(S):
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1. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST,
   WALAYAR - 678 555, PALAKKAD DISTRICT.

2. **THE COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAX CHECK POST,
   WALAYAR - 678 555, PALAKKAD DISTRICT.

3. **THE ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, SPECIAL CIRCLE,
   PERUMBAVOOR - 683 542, ERNAKULAM DISTRICT.

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:

msv/

WP(C).No. 31711 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF ACKNOWLEDGMENT DTD.17.2.2011 ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM TO PETITIONER.

EXT.P2; TRUE COPY OF LICENSE DTD.27.1.2015 ISSUED BY CENTRAL LICENSING AUTHORITY UNDER FOOD SAFETY STANDARDS ACT, 2006 TO PETITIONER.

EXT.P3: TRUE COPY OF TAX INVOICE DTD.27.1.2015 ISSUED BY CENTRAL LICENSING AUTHORITY UNDER FOOD SAFETY STANDARDS ACT, 2006 TO PETITIONER.

EXT.P4: TRUE COPY OF THE TRANSACTION SLIP GENERATED BY PETITIONER ON 17.9.2015.

EXT.P5: TRUE COPY OF NOTICE DTD.27.9.2015 ISSUED U/S.479(2) OF THE KVAT ACT BY 1ST RESPONDENT TO THE PETITIONER DEMANDING SECURITY DEPOSIT TO RELEASE DETENTION.

EXT.P6: TRUE COPY OF THE REPLY DTD.5.10.2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.

EXT.P7: TRUE COPY OF THE CERTIFICATE DTD.12.10.2015 ISSUED BY 3RD RESPONDENT TO PETITIONER TO FURNISH IT BEFORE 1ST RESPONDENT.

EXT.P8: TRUE COPY OF 2ND REPLY DTD.13.10.2015 FILED BEFORE 2ND RESPONDENT BY THE PETITIONER.

EXT.P9: TRUE COPY OF THE LETTER DTD.13.10.2015 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

EXT.P10: TRUE COPY OF THE FRESH FORM 8F DECLARATION GENERATED ON 14.10.2015 THROUGH KVATIS.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.31711 of 2015

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Dated this the 16th day of October, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P5 notice issued to him detaining a consignment of whey protein concentrate 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 for the petitioner and also the learned Government Pleader 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.P5 detention notice, it is seen that, the objection of the respondents is essentially with regard to the rate of tax applicable to the products. While the petitioner had classified the product as taxable at 5%. The stand of the respondents is that it is taxable at 14.5%.

Counsel for the petitioner would submit that the classification issue has already been decided in favour of the petitioner by the Assessing Officer.

(ii) I take note of the fact that, the petitioner is a registered dealer and the transportation was otherwise accompanied by valid documents as contemplated under the Kerala Value Added Tax Act. Under the said circumstances, I direct the 1st respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P5.

(iii) 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.

(iv) 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

mns/