

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 31878 of 2015 (H)

PETITIONER:

**DHR HOLDING INDIA PVT.LTD.,
HAVING ITS REGISTERED OFFICE AT
AGGARWAL CORPORATE TOWER, 5TH FLOOR,
PLOT NO.23, RAJENDRA PLACE, NEW DELHI AND
CORPORATE OFFICE AT UNIT 405 TO 408, 4TH FLOOR,
B WING, COMMERCIAL OFFICER TOWERS,
KOHINOOR CITY MALL, KIROL ROAD, OFF L.B.S.MARG,
KURLA WEST MUMBAI - 400 071, REPRESENTED BY
ITS DIRECTOR, SHRI.ANIL CHINDANI.**

**BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR**

RESPONDENT(S):

- 1.THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF TAXES,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2.THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR - 678 624.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE PURCHASE ORDER DATED 30.1.2014
INCLUDING THE TERMS AND CONDITIONS AND WARRANTY.
- EXT. P2 : A TRUE COPY OF THE INVOICE NO.95602384 DATED 28.3.2014.
- EXT. P3 : A TRUE COPY OF THE BILL OF ENTRY DATED 4.4.2014.
- EXT. P4 : A TRUE COPY OF THE INVOICE NO.96085294 DATED 23.7.2015.
- EXT. P5 : A TRUE COPY OF THE INVOICE NO.1150082858 DATED 7.8.2015.
- EXT. P6 : A TRUE COPY OF CERTIFICATE OF OWNERSHIP UNDER FORM 16
DATED 26.8.2015.
- EXT. P7 : A TRUE COPY OF DECLARATION BY POLAKULATH NARAYANAN RENAI
MEDICITY DATED 27.8.2015.
- EXT. P8 : A TRUE COPY OF DECLARATION BY THE PETITIONER DATED 3.9.2015.
- EXT. P9 : A TRUE COPY OF THE L/R DATED 11.9.2015.
- EXT. P10 : A TRUE COPY OF THE FORM JJ DATED 11.9.2015.
- EXT. P11 : A TRUE COPY OF THE FORM 8F DECLARATION DATED 14.9.2015.
- EXT. P12 : A TRUE COPY OF THE DELIVERY NOTE UNDER FORM 15
DATED 8.10.2015.
- EXT. P13 : A TRUE COPY OF OR NO.648/1/2015-16 DATED 8.10.2015 ISSUED BY
THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr

A.K.JAYASANKARAN NAMBIAR, J.

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Dated this the 19th day of October, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P13 notice issued to him detaining a consignment of Surgical Microscope with accessories 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.P13 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the goods that were being transported, were stated to be replacement parts for a machinery that was earlier imported by the

petitioner. The transportation of the goods, however, was not accompanied by any documents, that showed a co-relation with the original parts, which were earlier sent to the consignor of the goods, pursuant to which alone, the replacement parts could be supplied. Counsel for the petitioner would submit that the goods were originally imported from Germany and the replacement parts were imported from Germany into Chennai, from where it was being transported to the petitioner's premises in Ernakulam. He would submit that documents to co-relate with a return of the goods originally supplied could not be produced because the return of the goods originally supplied had yet to take place, after the replacement was done by the supplier. I note that the petitioner is not a registered dealer, but has produced Form-16 declaration to show the ownership of the goods and there is no dispute with regard to the transportation of the goods having not been accompanied by valid documents as contemplated under the KVAT Act. Under the said circumstances, I direct the 2nd to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the 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

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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 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /19.10.15