IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 32118 of 2015 (L)

PETITIONER(S) :

SYED ARIF PASHA, PROPRIETOR,
M/S.COOL STAR, NO.8, 5TH CROSS,
LALBAGH FORT ROAD, BANGALORE- 560 004.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :

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1. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAXES CHECK POST, WALAYAR.

2. INTELLIGENCE INSPECTOR,
   COMMERCIAL TAXES, SQUAD NO.III,
   ERNAKULAM, COCHIN- 682 015.

3. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA, THIRUVANANTHAPURAM- 695 022.

4. BHARAT SANCHAR NIGAM LIMITED,
   BSNL KERALA ELECTRICAL ZONE, THIRUVANANTHAPURAM
   REPRESENTED BY ITS EXECUTIVE ENGINEER (E),
   BSNL ELECTRICAL DIVISION, 4TH FLOOR, CTO BUILDING,
   KARAKKAT ROAD, ERNAKULAM, COCHIN- 682 016.

5. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM- 695 001.

R1 TO R3 & R5 BY GOVERNMENT PLEADER SMT.LILLY.K.T
R4 BY ADV. SRI.MATHEWS K.PHILIP, S.C, BSNL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 32118 of 2015 (L)
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APPENDIX

PETITIONER(S)' EXHIBITS :
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EXHIBIT P1: TRUE COPY OF RATE CONTRACT PURCHASE ORDER DATED 11.02.2015 ISSUED TO PETITIONER BY 4TH RESPONDENT FOR SUPPLY OF 3 UNITS OF AIR CONDITIONING UNITS INTENDED FOR ITS ETTUMANNOR TELEPHONE EXCHANGE.

EXHIBIT P1(A): TRUE COPY OF RATE CONTRACT PURCHASE ORDDER DATED 11.02.2015 ISSUED TO PETITONER BY 4TH RESPONDENT FOR SUPPLY OF 3 UNITS OF AIR CONDITIONING UNITS INTENDED FOR ITS CHERTHALA TELEPHONE EXCHANGE.

EXHIBIT P2: TRUE COPY OF INVOICE NO.50055588 DATED 07.10.2015 RAISED ON PETITIONER BY MANUFACTURER, UNDER TRANSIT SALE, WITH DELIVERY POINT AT ALAPPUZHA.

EXHIBIT P2(A): TRUE COPY OF INVOICE NO.50055589 DATED 07.10.2015 RAISED ON PETITIONER BY MANUFACTURER, UNDER TRANSIT SALE, WITH DELIVERY POINT AT KOTTAYAM.

EXHIBIT P3: TRUE COPY OF E-SUGAM NO.16343571644 DATED 09.10.2015, ACCOMPANIED WITH EXT.P2 INVOICE.

EXHIBIT P3(A): TRUE COPY OF E-SUGAM NO.163483571262 DATED 09.10.2015, ACCOMPANIED WITH EXT.P2(A) INVOICE.

EXHIBIT P4: TRUE COPY OF LORRY RECEIPT NO.4863 DATED 09.10.2015 ISSUED BY TRANSPORTER, ACCOMPANIED WITH EXT.P2 INVOICE.

EXHIBIT P4(A): TRUE COPY OF LORRY RECEIPT NO.4864 DATED 09.10.2015 ISSUED BY TRANSPORTER, ACCOMPANIED WITH EXT.P2(A) INVOICE.

EXHIBIT P5: TRUE COPY OF FORM NO.8F ONLINE DECLARATION DATED 12.10.2015 SUBMITTED BY TRANSPORTER BEFORE 1ST RESPONDENT FOR TRANSPORT OF GOODS AS PER EXT.P2 INVOICE.

EXHIBIT P5(A): TRUE COPY OF FORM NO.8F ONLINE DECLARATION DATED 12.10.2015 SUBMITTED BY TRANSPORTER BEFORE 1ST RESPONDENT FOR TRANSPORT OF GOODS AS PER EXT.P2 (A) INVOICE.

EXHIBIT P6: TRUE COPY OF NOTICE NO.737/2015-16 DATED 12.10.2015 ISSUED THROUGH TRANSPORTER, BY 2ND RESPONDENT, U/S.47(2) OF THE KVAT ACT DEMANDING SECURITY DEPOSIT.

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EXHIBIT P6(A): TRUE COPY OF NOTICE NO.735/2015-16 DATED 12.10.2015 ISSUED THROUGH TRANSPORTER, BY 2ND RESPONDENT, U/S.47(2) OF THE KVAT ACT DEMANDING SECURITY DEPOSIT.

EXHIBIT P7: TRUE COPY OF REPLY DATED 19.10.2015 SUBMITTED BY PETITIONER AGAINST EXT.P6 AND P6(A) NOTICES, BEFORE 1ST RESPONDENT.

EXHIBIT P7(A): TRUE COPY OF REPLY DATED 16.10.2015 SUBMITTED BEFORE 1ST RESPONDENT CONFIRMING EXT.P1 AND P1(A) PURCHASE ORDERS.

EXHIBIT P7(B): TRUE COPY OF LETTER DATED 19.10.2015 ISSUED BY 4TH RESPONDENT CONFIRMING THAT THE PURCHASE IS INTERSTATE AGAINST ISSUANCE OF 'C' FORM DECLARATION TO PETITIONER.

EXHIBIT P8: TRUE COPY OF INVOICE NO.CSR/PAC/AC310 DATED 09.10.2015 RAISED BY PETITIONER FOR THE TRANSIT SALE COVERED BY EXT.P2, SENT BY POST TO 4TH RESPONDENT ALONG WITH ENDORSED EXT.P4 LORRY RECEIPT.

EXHIBIT P8(A): TRUE COPY OF INVOICE NO.CSR/PAC/AC311 DATED 09.10.2015 RAISED BY PETITIONER FOR THE TRANSIT SALE COVERED BY EXT.P2, SENT BY POST TO 4TH RESPONDENT ALONG WITH ENDORSED EXT.P4(A) LORRY RECEIPT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 32118 of 2015
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Dated this the 20th day of October, 2015

JUDGMENT

The petitioners are aggrieved by Exts.P6 and P6(a) notices issued to them detaining consignments of electronic goods that was being transported at the instance of the petitioners. In the writ petition, the petitioners are aggrieved by the insistence of the respondents that the petitioners 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 petitioners and also the learned Government Pleader appearing for the respondents.

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 Exts.P6 and P6(a) notices, it is seen that the objection of the respondent is essentially with regard to the fact that the goods were seen consigned from Bangalore to M/s.BSNL, Cherthala and Ettumanoor for the purposes of their

telephone exchanges, but the petitioner was shown as a person, to whom the goods were sold by the consignor. Counsel for the petitioner would submit that the goods were, in fact, sold by the petitioners while in transit and the petitioner has issued the corresponding invoice to BSNL against C-Forms to be issued by the BSNL to the petitioners. Taking note of the said submission of counsel for the petitioners, I find that, if the transaction is a transit sale and is against a supply contract, then there will be no tax liability in the State of Kerala, because the said transaction cannot be deemed to be a sale under the KVAT Act. It is also stated that the petitioners are registered dealers in the State of Karnataka. I, therefore direct the 1st respondent to release the goods and the vehicle covered by the detention notices, to the petitioners, on his executing a simple bond without sureties for the security deposit amount demanded in the notices, before the 1st respondent.

(ii) The 1st respondent shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioners, within two months from the date of receipt of a copy of this judgment.

(iii) The petitioners 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 /20.10.15