

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 32294 of 2015 (J)

PETITIONER(S):

**M/S. E.G. GRANITES, MALAMEL,
PRUMANOOR P.O., KOTTARAKKARA,
KOLLAM DISTRICT-691 545,
REPRESENTED BY ITS MANAGING PARTNER
ELDO KURIAN.**

BY ADV. SRI.V.DEVANANDA NARASIMHAM.

RESPONDENT(S):

- 1. THE COMMERCIAL TAX INSPECTOR,
SQUAD NO.III, COMMERCIAL TAXES,
ALAPPUZHA-688 011.**
- 2. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, ANCHAL,
KOTTARAKKARA, KOLLAM DISTRICT-691 306.**

BY GOVT. PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE CERTIFICATE OF REGISTRATION DATED 29/04/2015 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.
- EXT.P2 COPY OF THE ANNUAL RETURN DATED 07/05/2014 E-FILED BY PETITIONER FOR THE YEAR 13-14.
- EXT.P3 COPY OF THE ANNUAL RETURN DATED 22/04/2015 E-FILED BY THE PETITIONER FOR THE YEAR 2014-15.
- EXT.P4 COPY OF THE MONTHLY RETURN DATED 16/10/2015 E-FILED BY PETITIONER FOR THE MONTH SEPTEMBER 2015.
- EXT.P5 COPY OF THE TAX INVOICE DATED 12/05/2015 OF EXCAVATOR SPECIFYING REGISTERED PLACE OF BUSINESS AND PRIVATE WORK SITE ADDRESS.
- EXT.P6 COPY OF THE ONLINE FORM 15 DELIVERY NOTE DATED 17/10/2015 ACCOMPANIED WITH CONSIGNMENT.
- EXT.P7 COPY OF THE COVERING LETTER DATED 18/10/2015 ISSUED BY PETITIONER FOR TRANSPORTATION.
- EXT.P8 COPY OF THE NOTICE DATED 19/10/2015 ISSUED U/S. 47(2) OF THE KVAT ACT, 2003 BY 1ST RESPONDENT TO PETITIONER DEMANDING SECURITY DEPOSIT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.32294 of 2015

.....
Dated this the 21st day of October, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P8 notice issued to him detaining a Crawler Excavator that was 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 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.P8, it is seen that the objection of the respondents is essentially that the excavator which is procured by the petitioner at concessional rate of tax after furnishing 'C' Forms was found consigned to a destination where the petitioner does not have a place of business. The

respondent therefore suspected evasion of tax. It is also pointed out that, the petitioner did not have an authority to deal in the goods that was being transported. Counsel for the petitioner would submit that he had purchased the excavator by availing a concessional rate of tax under the CST by issuing 'C' Form since the item in question was capital goods that was used in connection with the crushing operations in the unit at Kottarakkara. The vehicle en route was used for a work in Mangalam dam, Palakkad and it was being transported thereafter to the unit at Kottarakkara. It is submitted that the transportation of the goods was covered by a valid invoice which showed both the premises at Mangalam dam, Palakkad and also the unit at Kottarakkara as addresses of the consignee.

(ii) It is also submitted that, the petitioner is a registered dealer in the State of Kerala. Taking note of the said submission, I direct the 1st respondent to release the goods and the vehicle to the petitioner on the petitioner paying Rs.1,00,000/- towards security deposit and furnishing a simple bond without surety for the balance amount demanded in Ext.P8 notice before the 1st respondent.

(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/21.10.15

