

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. 32301 of 2015 (K)

PETITIONER(S):

**M/S. AROMA HORTICULTURE PRODUCTS (P) LTD.,
TC 12/282, PLAMOOD, PATTOM,
THIRUVANANTHAPURAM, REPRESENTED BY
K.P.VINAYAN, VICE PRESIDENT.**

**BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY**

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
KUNJIHIPPALLY.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER,
KARAMANA P.O., THIRUVANANTHAPURAM, PIN - 695 001.**

BY GOVERNMENT 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:**

msv/

WP(C).No. 32301 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER
DTD.24.7.2015.**

**EXT.P2: TRUE OCPY OF THE COMMERCIAL INVOICE NO.6640002506 DTD.13.10.2015
ACCOMPANIED WITH THE CONSIGNMENT.**

**EXT.P3: TRUE COPY OF THE FORM 8F DECLARATION DTD.16.10.2015 ACCOMPANIED
WITH THE CONSIGNMENT.**

**EXT.P4: TRUE COPY OF THE FORM 17A NOTICE NO.OR-113/15-16 DTD.19.10.2015
ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv**/**

A.K.JAYASANKARAN NAMBIAR, J.

.....

W.P.(C).No.32301 of 2015

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Dated this the 21st day of October, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P4 notice issued to him detaining a forklift 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.P4, it is seen that the objection of the respondents is essentially with regard to the documents that accompanied the transportation of the goods. It is stated that the goods that were stated to be for the own use of the petitioner were not covered by the mandatory Form 16 that was to be generated electronically. Counsel for the petitioner would submit that the

goods in question were purchased against Form 'H' that was issued by the petitioner for the purposes of subsequent export to a buyer in Madagascar. He would point to Ext.P2 invoice, that accompanied the transportation of the goods, wherein reference to the Form 'H' issued by the petitioner is also seen made. Taking note of the said submission, 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.P4 notice 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 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 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

