

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 32559 of 2015 (T)

PETITIONER:

**SIKKANTHAR, S/O.K.U.ASAN,
AGED 38 YEARS, 30/19, APPUS STREET,
CHENNAI, NOW RESIDING AT : CHITTELPARAMBIL,
ANRA-2, 49/1103, CHUTTUPADUKARA,
AISWARYA NAGAR, EDAPPALLY, KOCHI - 682 024.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST,
WALAYAR - 678 624.**
- 2. INTELLIGENCE INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR - 678 624.**

BY GOVERNMENT PLEADER SMT.K.T.LILLY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE PARTNERSHIP DEED DATED 1.7.2014.
- EXT. P2 : TRUE COPY OF THE RECEIPT REGISTRATION ISSUED BY THE TAX DEPARTMENT.
- EXT. P3 : TRUE COPY OF THE INVOICE NO.007 DATED 21.10.2015.
- EXT. P4 : TRUE COPY OF THE CONSIGNMENT DECLARATION ISSUED BY THE KERALA COMMERCIAL TAX DEPARTMENT IN FROM 8F.
- EXT. P5 : TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 24.10.2015 NO.OR 723/1/1516.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32559 OF 2015 (T)

Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the KVAT Act, is aggrieved by Ext.P5 notice issued to him, detaining a consignment of plastic plates, containers etc., 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 appearing for the petitioner and also the learned Government Pleader appearing 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 notice, it is seen that the objection of the respondents is essentially with

regard to classification of the items for the purposes of taxation. While the petitioner had classified the items as attracting tax @ 5% it is the stand of the respondents that the items would attract tax @ 20%. Counsel for the petitioner would submit that the items were correctly classified and attract tax only @ 5% as is evident from the description of the product, the invoice as also the Form 8F declaration that was submitted. It is also stated that the petitioner is a registered dealer within the State. Taking note of the said submission, I direct the 2nd respondent to release the goods and the vehicle to the petitioner subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P5 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 the petitioner, within two months from the date of receipt of a copy of this judgment, untrammelled by the observations in 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