IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

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

WP(C).No. 32631 of 2015 (D)

PETITIONER:

M/S.EURO BUSINESS SYSTEM
5TH FLOOR, BLOCK 1, NEW BUS STAND
THAVAKKARA, KANNUR-670 001
REPRESENTED BY ITS PARTNER, MR. PRAKASH T.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN

RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE COMMERCIAL TAX OFFICER, 3RD CIRCLE
KANNUR-670 012.

3. THE COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECKPOST
WALAYAR-678 624.

4. THE INTELLIGENCE OFFICER (IB)
COMMERCIAL TAXES, MATTANCHERRY AT MINI CIVIL STATION
ALUVA-683 101.

BY GOVERNMENT PLEADER SRI. S. SUJITH KUMAR

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

WP(C).No. 32631 of 2015 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1	**-**	**COPY OF THE NOTICE DATED 08.10.2015, ISSUED U/S. 47(2) OF THE KVAT ACT BY THE 3RD RESPONDENT.**
EXHIBIT P2	**-**	**COPY OF THE INVOICE NO.160200349 DATED 30.09.2015, WHICH ACCOMPANIED THE INTER-STATE CONSIGNMENT.**
EXHIBIT P3	**-**	**COPY OF THE TRANSACTION SLIP DATED 02.10.2015, GENERATED BY THE TRANSPORTER, GATI.**
EXHIBIT P4	**-**	**COPY OF THE REPLY DATED 14.10.2015 (WITH ANNEXURES), SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
EXHIBIT P5	**-**	**COPY OF THE ORDER DATED 16.10.2015 PASSED BY THE HON'BLE COURT IN WP(C) NO.22343 OF 2015.**

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J

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W.P(C) No.32631 of 2015

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Dated this the 27th day of October, 2015

<u>JUDGMENT</u>

The petitioner is a dealer within the State of Kerala, who has transported interstate, Multi-Function Printers, which is detained at the Checkpost as is indicated at Ext.P1. The reason for detention and the demand for security deposit at twice the value of tax sought to be evaded, is on the ground of misclassification. The Department contends that, by misclassifying the goods, the petitioner has sought to evade tax. Even in penalty matters, this Court has held that misclassification would be best looked at by the Assessing Officer and not by the Intelligence Officer. The principle is more so applicable herein. The detention has been made by the Checkpost authorities, which can be only on the ground of suspicion of evasion of tax. A mere misclassification, which is discernible from the records, cannot lead to a conclusion of evasion. The issue with respect to whether the higher rate of tax is applicable cannot be looked at as an issue of evasion of tax. In any event, the petitioner shall be allowed release of goods on execution of a simple bond and adjudication proceedings shall be completed expeditiously untrammeled by any observation herein, but however regulated by the judgments of this Court.

The writ petition is disposed of.

K. VINOD CHANDRAN,
JUDGE.

sp/27/10/15