

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 32655 of 2015 (F)

PETITIONER :

**GEORGE MARTIN JOSE,
KELAKATH, 53, PERUMBAVOOR/XVI- 683 542**

**BY ADVS.SRI.AJI V.DEV
SRI.SUSHANTH.J.**

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR-678 625**
- 2. ASSISTANT COMMISSIONER,
(WORKS CONTRACT & LUXURY TAX),
O/O. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
MATTANCHERRY-682 002**

BY GOVERNMENT PLEADER SMT. K.T.LILLY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE REGISTRATION CERTIFICATE DATED 16/10/2015 ISSUED UNDER THE KVAT ACT.**
- P1(A) COPY OF THE REGISTRATION CERTIFICATE DATED 11/11/2013 ISSUED UNDER THE CST ACT.**
- P2 COPY OF THE WORK ORDER ISSUED BY THE EXECUTIVE ENGINEER, KERALA WATER AUTHORITY DATED 08/06/2015**
- P3 COPY OF THE PERMISSION GRANTED U/S. 8(A) OF THE KVAT ACT IN FORM IE DATED 19/06/2015**
- P4 COPY OF THE PURCHASE ORDER PLACED BY THE PETITIONER DATED 06/06/2015.**
- P4(A) COPY OF THE TAX INVOICE NO.SL-00287 DATED 22/09/2015 ACCOMPANIED WITH THE CONSIGNMENT.**
- P5 COPY OF THE TRANSACTION SLIP DATED 28/09/2015 FILED BEFORE THE CHECK POST OFFICIALS.**
- P6 COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 30/09/2015 DEMANDING SECURITY DEPOSIT.**
- P7 COPY OF THE REPLY DATED 20/10/2015 FILED BY THE PETITIONER.**
- P8 COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT CONFIRMING DEMAND OF SECURITY DEPOSIT DATED 20/10/2015.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 32655 of 2015
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Dated this the 28th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P6 notice issued to him detaining a consignment of Industrial valves that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent 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 respondent.

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 Ext.P6 notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item that was transported. While the petitioner had classified the item as pipe fittings taxable at 5%, the accompanying invoice showed the goods to be industrial valves, which attracted tax at 14.5%. It is stated that on physical

verification also that the goods were found to be industrial valves. The respondents therefore, suspected a possible evasion of tax. Counsel for the petitioner would submit that the difference in classification in the instant case would not make any difference with regard to the tax liability of the petitioner, since the petitioner had opted to pay tax on compounded basis and therefore, irrespective of the rate of tax on the individual item, the petitioner's liability was to pay tax on the entire contract value at 5%. Taking note of the said submission, and also taking into account the fact that the petitioner is a registered dealer, I direct the 1st respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the 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.

Sd/-

W.P.(C). No. 32655 of 2015

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /28.10.15

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