IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32937 of 2015 (N)

PETITIONER:

SPORTY INDIA, ELEDATHIKUZHY BUILDING,
VIII/178, NEAR NEERAMUGAL JACOBITE CHURCH,
THIRUVANIYOOR.P.O., ERNAKULAM DISTRICT,
PIN - 682 308, REPRESENTED BY SRI.ELDHO JOSE,
PROPRIETOR.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.V.JAYAPRAKASH

RESPONDENT(S):

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1. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST,
   WALAYAR, PALAKKAD DISTRICT - 678 624.

2. THE COMMERCIAL TAX OFFICER,
   2ND CIRCLE, PERUMBAVOOR,
   ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 32937 of 2015 (N)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : **COPY OF REGISTRATION CERTIFICATE.**

EXT. P2 : **COPY OF INVOICE DATED 22.9.2015.**

EXT. P2(A) : **COPY OF INVOICE DATED 23.9.2015.**

EXT. P3 : **COPY OF NOTICE DATED 30.9.2015 ISSUED BY THE 1ST RESPONDENT.**

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32937 OF 2015 (N)

Dated this the 29th 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.P3 notice issued to him, detaining a consignment of badminton racquets and shuttle cocks, 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.P3 notice, it is seen that the objection of the respondents is essentially with regard to the classification of the items for the

purposes of taxation. While the petitioner had declared the goods as taxable @ 5%, the respondents would maintain that the goods are taxable @ 14.5%. Counsel for the petitioner would submit that the rate of 14.5% is attracted only in respect of sports apparel and foot wear and will not get attracted to racquets and shuttle cocks. It is also pointed out that the petitioner is a registered dealer within the State and that the transportation of the goods was accompanied by valid documents as prescribed under the KVAT Act. Taking note of the said submission, I direct the 1st respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P3 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, 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 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/29/10/15