IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 33284 of 2015 (I)

PETITIONER :

SRI. MUHAMMED RAMSEEN S.P.
PROPRIETOR, M/S. MATHAMANGALAM RUBBERS
RUBBER & HILL PRODUCE DEALERS, M.M.BAZAR
MATHAMANGALAM, KANNUR-670306.

BY ADV. SRI.DALE P. KURIAN

RESPONDENT(S) :
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1. **THE ASSISTANT COMMISSIONER**
   COMMERCIAL TAXES, SPECIAL CIRCLE, KANNUR-670 001.

2. **THE COMMERCIAL TAX INSPECTOR**
   COMMERCIAL TAX CHECK POST, NEW MAHE-673 311.

R1 & R2 BY GOVT. PLEADER SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 33284 of 2015 (I)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE APPLICATION FOR RENEWAL OF REGISTRATION DATED 17.4.2015.

EXHIBIT P2: TRUE COPY OF THE INVOICE FROM M/S. RUBBER INDIA, KARNATAKA, DATED 25.10.2015.

EXHIBIT P3: TRUE COPY OF THE DELIVERY NOTE IN FORM NO.15 DATED 25.10.2015.

EXHIBIT P4: TRUE COPY OF THE C FORM IN FORM NO.2 DATED 25.10.2015.

EXHIBIT P5: TRUE COPY OF THE DOWNLOADED E-SUGAM FORM FROM THE RESPONDENTS WEBSITE DATED 25.10.2015.

EXHIBIT P6: TRUE COPY OF THE E-CONSIGNMENT DECLARATION IN FORM NO.8, DATED 25.10.2015.

EXHIBIT P7: TRUE COPY OF DETENTION NOTICE DATED 26.10.2015.

EXHIBIT P8: TRUE COPY OF THE LETTER DATED 26.10.2015 FROM THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE KERALA HIGH COURT DIVISION BENCH RULING CITED CIT VS. PAREKH BROS. REPORTED IN 150 ITR 105 (KER).

EXHIBIT P10: TRUE COPY OF THE JUDGMENT DATED 9.12.2012 IN WPC NO.18427 OF 2012.

EXHIBIT P11: TRUE COPY OF THE MONTHLY RETURN OF SEPTEMBER, 2015 DATED 15.10.2015.

EXHIBIT P11(a): TRUE COPY OF THE TAX PAYMENT CHALAN DATED 15.10.2015, OF THE MONTHLY RETURN OF SEPTEMBER, 2015.

RESPONDENT(S)' EXHIBITS : NIL
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//TRUE COPY//

P.S. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 33284 of 2015
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Dated this the 3rd day of November, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P7 notice issued to him detaining a consignment of rubber scrap 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.P7 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the transportation of the goods was not accompanied by any valid document as contemplated under the KVAT Act. The respondents

therefore, suspected evasion of tax. Counsel for the petitioner would submit that the transportation of the goods was accompanied by a copy of the Form 8F declaration, that was uploaded by the petitioner in the KVATIS Website and in the said Form 8F declaration, there was a reference to the invoice that ought to have accompanied the transportation of the goods. It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submission of the learned counsel for the petitioner, but finding that the transportation of the goods was not accompanied by the documents that were required in terms of the KVAT Act, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petitioner furnishing a bank guarantee for the security deposit amount demanded in Ext.P7 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /03.11.15