IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 33323 of 2015 (M)

PETITIONER(S):

A.R. GOPALAKRISHNAN, MG. PARTNER,
M/S.OMEGA ENTERPRISES, AP IX/17,
METHALA, ASAMANNOOR P.O.,
PERUMBAVOOR.

BY ADVS.SRI.P.S.SOMAN,
SMT.T.RADHAMANY.

RESPONDENT(S):
----

1. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST,
   WALAYAR.

2. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   TAXES DEPARTMENT, GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
   GOVERNMENT OF KERALA, TAX TOWER,
   KARAMANA P.O., THIRUVANANTHAPURAM-695 002.

BY GOVT. PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 33323 of 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER.
EXT.P2	COPY OF THE COMMERCIAL INVOICE NO.348 DATED 29/10/2015 ACCOMPANIED WITH THE CONSIGNMENT.
EXT.P3	COPY OF THE FORM 15 ONLINE DELIVERY NOTE NO.321513/DN/31430/2015 DATED 29/10/2015 ACCOMPANIED WITH THE CONSIGNMENT.
EXT.P4	COPY OF THE FORM 8F DECLARATION DATED 29/10/2015 ACCOMPANIED WITH THE CONSIGNMENT.
EXT.P5	COPY OF THE FORM 17A NOTICE NO.OR-309/B/2015-16 DATED 30/10/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

\- -

W.P.(C) No.33323 of 2015

\- -

Dated this the 2nd day of November 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P5 notice issued to him detaining a consignment of Plywood of 12mm thickness 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 for the petitioner and also the learned Government Pleader 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 that while what was being transported was 12mm plywood, the invoice and the accompanying

documents showed that what was being transported was 18mm plywood. Counsel for the petitioner submits that the description in the invoice showing the plywood as 18mm, was a mistake, and in fact, the petitioner had paid advance tax by treating the consignment as 18mm plywood and thereby effected payment of more tax than what was due in respect of the 12mm plywood. It is also submitted that the petitioner is a registered dealer within the State.

(ii) Taking note of the said contention of counsel for the petitioner and finding that the transportation of the goods was accompanied by valid documents as contemplated under the KVAT Act, I direct the 1st respondent to release the goods and 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 1st respondent.

(iii) 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.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/