IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 33660 of 2015 (F)

PETITIONER :

SURESH KULANDAIVEL, AGED 40 YEARS,
MATRIX LABS, 14/21, PANICKERS BUILDING,
SCHOOL STREET/SATHYA NAGAR,
PADI CHENNAI - 600107

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS :

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECKPOST, WALAYAR - 678624.

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 33660 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE CST REGISTRATION CERTIFICATE OF THE PETITIONER.

P2: COPY OF THE INSTRUMENTS PLACEMENT CONTRACTDT 21/8/2015.

P3: COPY OF THE FORM NO. 16 OWNERSHIP CERTIFICATE.

P4: COPY OF THE DELIVERY CHALLAN DT 13/10/2015.

P5: COPY OF THE NOTICE NO. OR 3118/94/15-16 DT 19/10/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.33660 of 2015

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Dated this the 6th day of November, 2015

J U D G M E N T

A maglumi 1000 analyser machine that was being transported at the instance of the petitioner was detained by the respondent. Ext.P5 is the detention notice. 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 for the petitioner and also the learned Government Pleader for the respondent.

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 detention notice, it is seen that the objection of the respondent is essentially with regard to the documents that ought to have accompanied the transportation of the goods. It is pointed out that, the transportation of goods was accompanied by a Form-16 certificate of ownership that was seen signed by the consignee claiming ownership of the goods. It was found, however, that the consignee

was not the owner of the goods, and therefore, the Form-16 certificate issued by the consignee could not be accepted. The petitioner is also not a registered dealer in the State. Counsel for the petitioner would submit that as per the terms of the agreement entered into between the petitioner and the consignee, the machine in question was to be supplied to the premises of the consignee for a period of five years after which it was to be taken back. As consideration for the supply of the machine, the consignee was obliged to buy the reagents, that were necessary for operating the machine, from the consignor or his distributors within the State. The terms of the agreement also contemplate that the ownership of the machine is to be with the petitioner at all time and the petitioner has a right to take away the machine from the premises of the consignee, if the consignee does not comply with the conditions in the agreement. On a consideration of the said submission, I find that the only valid document that accompanied the transportation of the goods for the purposes of Kerala Value Added Tax Act was the Form-16 certificate of ownership which in this case was seen signed by the consignee, who even according to the petitioner is not the owner of the goods. Under the said circumstances and taking note of the fact that, the petitioner is not a registered dealer in the state, I feel that the interests of justice would be met by directing the respondent to release the goods and the vehicle to the petitioner on the petitioner paying 50% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without surety for the balance amount demanded therein before the respondent.

(iii) The 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 respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/06.11.15