

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. 33731 of 2015 (N)

PETITIONER(S):

**K.O.MOHAMMED SHAH, MANAGING PARTNER,
M/S.SUNRISE TSR FACTORY, EDAYAR,
MUPPATHADAM P.O., ALUVA, ERNAKULAM.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR, PALGHAT - 678 624.**
- 2. DEPUTY COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
MATTANCHERY, ERNAKULAM - 682 002.**
- 3. COMMERCIAL TAXES OFFICER,
NORTH PARAVUR - 683 513.**
- 4. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

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:**

msv/

WP(C).No. 33731 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: THE TRUE COPY OF THE TAX INVOICE NO.30/31.10.15.

**EXT.P2: THE TRUE COPY OF THE DEPARTMENTAL DELIVERY NOTE IN FORM 15,
NO.321509/DN/3541/2015 DTD.31.10.2015.**

EXT.P3: THE TRUE COPY OF THE 'N' FORM IN SL.NO.270534/216441 DTD.31.10.2015.

**EXT.P4: THE TRUE COPY OF THE CHECK POST DECLARATION IN FORM NO.8F
TOKEN NO.16/884514 DTD.31.10.2015.**

EXT.P5: THE TRUE COPY OF THE LORRY RECEIPT NO.43932 DTD.31.10.2015.

EXT.P6: THE TRUE COPY OF THE NOTICE NO.OR-316/B/15-16/1.11.2015.

EXT.P7: THE TRUE COPY OF THE LETTER DTD.1.11.2015.

EXT.P8: THE TRUE COPY OF THE LETTER DTD.3.11.2015.

EXT.P9: THE TRUE COPY OF THE NOTIFICATION SRO.NO.753/2011 DTD.30.11.2011.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.33731 of 2015

Dated this the 6th day of November 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 Crumb Rubber, 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.P6 notice, it is seen that the objection of the respondents is essentially that the

Deputy Commissioner, Ernakulam had directed to detain the consignment, in connection with the default committed by the petitioner in payment of taxes for an earlier period. Counsel for the petitioner would submit that the said reason cannot be cited to detain the goods, in respect of which there is no dispute with regard to payment of tax that is due under the KVAT Act. It is submitted that without prejudice to these contentions, he is prepared to pay the tax amount due on the present consignment by way of advance tax so as to obtain a release of the goods. Taking note of the said submission of counsel for the petitioner, and taking note of the fact that the petitioner is a registered dealer within the State, I direct the 1st respondent to release the goods and vehicle covered by Ext.P6 notice, to the petitioner, subject to the petitioner paying the tax amount due on the consignment covered by Ext.P6 notice, by way of advance tax. The petitioner shall remit the tax amount due in respect of the consignment and produce proof of payment of the same before the 1st respondent for obtaining a release of the goods.

(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/

A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/