

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. 33802 of 2015 (A)

PETITIONER(S):

**M/S. KAY KAY EXPORTS,
KAY KAY HOUSE, 39/116,
MULLASSERY CANAL ROAD, COCHIN-682011,
REPRESENTED BY ITS PROPRIETOR,
MR.K.KRISHNA KUMAR.**

**BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD**

RESPONDENT(S):

**THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
MUTHANGA-673592.**

BY GOVERNMENT PLEADER SMT.LILLY IK.T.

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

PJ

WP(C).No. 33802 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE INVOICE DATED 28/10/15

**EXHIBIT P2 TRUE COPY OF THE FORM NO.16, CERTIFICATE OF OWNERSHIP
(MANUALLY) DATED 29/10/15**

EXHIBIT P3 TRUE COPY OF THE NOTICE ISSUED DATED 3/11/15

EXHIBIT P4 TRUE COPY OF THE JUDGMENT REPORTED IN 27 VST 131

EXHIBIT P5 TRUE COPY OF THE NOTICE DATED 2/11/15

EXHIBIT P6 TRUE COPY OF THE APPLICATION DATED 3/11/15

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....

W.P.(C).No.33802 of 2015

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Dated this the 6th day of November, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P3 notice issued to him detaining a consignment of Diesel generating sets with sound proof enclosure 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 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.P3 detention notice, it is seen that the objection of the respondent is essentially that the petitioner who was registered under the Central Sales Tax Act did not have the authorisation to effect interstate purchase of

diesel generating sets at concessional rate of 2%. It is also pointed out that although a manual Form -16 certificate of ownership was produced, the same was not generated electronically as mandated by Circular No.3/15 dated 14.01.2015 of the Commissioner of Commercial Taxes. Counsel for the petitioner would submit that as regards the objection of not having authorisation to procure the diesel generating set at concessional rate of 2% under the CST Act, this is only a technical objection since the petitioner had already applied for incorporating the diesel generating set, as a commodity required for manufacturing activities, in the registration certificate issued to him under the CST Act. It is also pointed out that inasmuch as there was a manual Form -16 which was shown to the authority, and further, he has also taken steps to electronically generate the Form-16 to comply with the directions in the Circular, the goods ought not be detained solely because the electronically generated Forms -16 was not there at the time of detention.

(ii) Taking note of the said submission and finding that, the petitioner is a registered dealer and the transportation of the goods was accompanied by a valid invoice, I direct the respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P3 notice.

(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

