IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 34044 of 2015 (E)

PETITIONER :

M/S. VODAFONE CELLULAR LTD.
4TH FLOOR, ANGELS ARCADE,
SOUTH KALAMASSERY, CUSAT P.O., COCHIN - 682022.
REPRESENTED BY ITS AUTHORISED SIGNATORY,
SRI. SANTHOSH, AGED 42 YEARS

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

RESPONDENT :

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR - 678624

BY GOVERNMENT PLEADER SMT. LILLY K.T.

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

bp

WP(C).No. 34044 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY F THE INVOICE DT 4/11/2015.

P2: COPY OF THE FORM 8F DECLARATION.

P3: COPY OF THE NOTICE DT 6/11/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 34044 of 2015

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Dated this the 11th day of November, 2015

JUDGMENT

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 Lead 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.P3 notice, it is seen that the objection of the respondent is essentially with regard to the rate of tax applicable to the commodity. While the petitioner declared the commodity as attracting 5% tax, the respondent finds that the commodity will

attract tax at 14% under the KVAT Act. Counsel for the petitioner would submit that, this being an inter-state sale, the tax leviable is only 2% under the CST Act, and the said tax has already been paid. It is also pointed out that the petitioner is a registered dealer in the State. Taking note of the said submission, and finding that the transportation of the goods was otherwise in order, I direct the respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the notice, before the respondent.

(ii) 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.

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

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /11.11.15