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. 34109 of 2015 (K)

PETITIONER:

ROYAL FURNISHING, 40/5431,
T.D.ROAD(NORTH), ERNAKULAM, PIN - 682 035,
REPRESENTED BY ITS MANAGER, L.REGHUPATHY.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENT(S):
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1. **COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST,
   WALAYAR, PALAKKAD DISTRICT - 678 624.

2. **ASSISTANT COMMISSIONER(ASSESSMENT),**
   COMMERCIAL TAXES, SPECIAL CIRCLE-I,
   THEVARA, ERNAKULAM - 682 015.

BY GOVERNMENT PLEADER SRI.RANJITH

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

mbr/

WP(C).No. 34109 of 2015 (K)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : COPY OF REGISTRATION CERTIFICATE.

EXT. P2 : COPY OF INVOICE DATED 14.9.2015.

EXT. P2(A) : COPY OF RETURN FOR THE MONTH OF SEPTEMBER 2015.

EXT. P3 : COPY OF INVOICE DATED 27.10.2015.

EXT. P3(A) : COPY OF DECLARATION IN FORM 8F (TRANSACTION SLIP) DATED 27.10.2015.

EXT. P4 : COPY OF NOTICE DATED 4.11.2015 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 34109 of 2015

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Dated this the 11th day of November 2015

<u>JUDGMENT</u>

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 detention notice issued to him detaining a consignment of Curtain cloth 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.P4 notice, it is seen that the objection of the respondents is essentially with regard to the classification of the item for the

purpose of tax. While the petitioner had shown the goods as taxable @ 1%, the respondents were of the view that the item would be taxable @ 14.5%. Counsel for the petitioner would submit that the item transported is curtain cloth which would correctly attract tax as textile fabric @ 1%. It is also stated that the petitioner is a registered dealer within the state. Taking note of the said submission of counsel for the petitioner and finding that the transportation of the goods was otherwise in accordance with the provisions of the KVAT Act, I direct the 1st respondent to release the goods and vehicle covered by Ext.P4 notice, to the petitioner, subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P4 notice, before the 1st respondent.

(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

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