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. 34113 of 2015 (L)

PETITIONER(S):

KONICA MINOLTA BUSINESS INDIA PVT. LTD.,
HAVING REGISTERED OFFICE AT III/407,
PULIMOODU BUILDING, CHURCH ROAD,
NORTH KALAMASSERY, ERNAKULAM-683104,
REPRESENTED BY ITS MANAGESR MR.SUDEESH P.S.

BY ADV. SMT.LATHA ANAND

RESPONDENT(S):

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1. COMMERCIAL TAXES INSPECTOR,
COMMERCIAL TAX CHECK POST, BANGARA,
MANJESHWARAM, KASARGOD-671323.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI.RENJITH

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

PJ

WP(C).No. 34113 of 2015 (L)

APPENDIX

PETITIONERS' EXHIBITS

P1: **COPY OF STOCK TRANSFER NOTE FOR SHIPMENT NO.1000274488**

P2: **COPY OF THE STOCK TRANSFER NOTE FOR SHIPMENT NO.1000274499**

P3: **COPY OF THE FORM NO.8F, E-CONSIGNMENT DECLARATION**

P4: **COPY OF THE NOTICE UNDER SECTION 47(2) OF THE KVAT ACT**

P5: **COPY OF THE SUBMISSION OF THE PETITIONER.**

RESPONDENTS' EXHIBIT

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.34113 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.P4 detention notice issued to him detaining a consignment of Computer peripherals 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 that the goods under transport were declared by the petitioner as taxable @ 5%, whereas according to the respondents, it would attract tax @ 14.4%. Counsel for the petitioner would submit that going by the entries in the schedule to the KVAT Act, the item transported is correctly classifiable under a heading that attracts tax at 5%. It is also pointed out 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

sm/