IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 34554 of 2015 (T)

PETITIONER:

M/S.MAKITA POWER TOOLS INDIA PVT.LTD.,
DOOR NO.XVI/443A, JUBILEE ROAD,
MARADU, NETTOR POST, COCHIN,
REPRESENTED BY ITS'AUTHORIZED SIGNATORY
SRI.MOHAN.

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

RESPONDENT:

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES CHECKING STATION,
LAKKIDI, WAYANAD - 673 576.

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 34554 of 2015 (T)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : **TRUE COPY OF THE SCHEME IN FORCE FROM 1.4.2015.**

EXT. P2 : **TRUE COPY OF THE TOOLS SCHEME PRICE LIST WITH MRP FOR THE 3RD QUARTER OF 2015-2016.**

EXT. P3 : **TRUE COPY OF THE INVOICE BEARING NO.KL15-16-0862 DATED 13.10.2015.**

EXT. P4 : **TRUE COPY OF THE NOTICE DATED 2.11.2015.**

EXT. P5 : **TRUE COPY OF THE REPLY DATED 6.11.2015.**

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 34554 of 2015

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Dated this the 16th day of November, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 notice issued to him detaining a consignment of Petrol Brush Cutters 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.P4 notice, it is seen that the objection of the respondent is essentially that the consignee had not collected tax as per the invoice and further, that the invoice value shown was lower than the MRP. Counsel for the petitioner would submit that the goods under transport were covered by a valid invoice and the said invoice shows that the

petitioner had collected tax at the rate of 5% in respect of the commodity. As regards the objection with regard to the invoice value, it is stated that the value shown in the invoice was the correct value at which the goods were sold to the customer, and therefore, there was no reason to doubt the genuineness of the transaction. It is also pointed out that the petitioner is a registered dealer in the State and the transportation of the goods was accompanied by valid documents as contemplated in the KVAT Act. Taking note of the said submission, 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 /16.11.15