

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. 34575 of 2015 (V)

PETITIONER(S):

**M/S. SHERBROOKE FENESTRATIONS PRIVATE LTD,
41/1651, SI KADAVIL COURT, ARANGATH CROSS ROAD,
PULLEPADY, COCHIN-682018, REPRESENTED BY ITS
MANAGING DIRECTOR.**

**BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.K.H.ANSAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS COMMISSIONER AND
SECRETARY TO DEPARTMENT OF COMMERCIAL TAXES,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE INTELLIGENCE OFFICER, SQUAD NO.II,
DEPARTMENT OF COMMERCIAL TAXES,
ALAPPUZHA AT CHENGANNUR-688001.**

BY GOVERNMENT PLEADER SRI.RENJITH

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

PJ

WP(C).No. 34575 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE DELIVERY NOTE DATED 12/11/15

EXHIBIT P2. COPY OF THE DISPATCH NOTE DATED 12/11/15

EXHIBIT P3. COPY OF THE NOTICE UNDER SECTION 47(2) OF THE KVAT ACT

EXHIBIT P4. COPY OF THE OBJECTION DATED 13/11/15

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.34575 of 2015

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.P3 notice issued to him detaining a consignment of door frames 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 that the transportation was not accompanied by a valid sale invoice. Counsel for the petitioner would submit that the sale invoice had not been generated as yet, since the supply of the goods was subject to a condition of acceptance by the consignee. It was under these

circumstances that the transportation of the goods was accompanied only by a delivery note, wherein these facts were mentioned. It is also pointed out that the petitioner is a registered dealer in the State. Taking note of the said submission of counsel for the petitioner, and finding that the transportation of the goods was duly accompanied by a valid delivery note in the prescribed form, I direct the 2nd 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 2nd 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 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE