IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 34722 of 2015 (M)

PETITIONER :

M/S. LEO DISTRIBUTORS,
IX/529/4,6, N.H.BYPASS JUNCTION,
KUTTANELLUR, THRISSUR,
REPRESENTED BY ITS MANAGER SURESHKUMAR.K.G.

BY ADV. SRI.MAHESH V.MENON

RESPONDENT(S):
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1. ASST. COMMISSIONER (ASSESSMENT),
   SPECIAL CIRCLE, DEPT. OF COMMERCIAL TAXES,
   THRISSUR.

2. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, WALAYAR,
   PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.34722/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE REGISTRATION CERTIFICATE ISSUED BY 1ST RESPONDENT DATED 22/09/2014

P2 COPY OF THE INVOICE NO.1972 DATED 04/11/2015

P2(A) COPY OF THE INVOICE NO.1973 DATED 04/11/2015

P3 COPY OF THE TRANSACTION SLIP GENERATED BY THE COURIER AGENCY DATED 05/11/2015

P4 COPY OF THE NOTICE IN FORM NO.17A UNDER ISSUED BY THE 2ND RESPONDENT DATED 09/11/2015

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 34722 of 2015

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Dated this the 18th 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 Medicated Soap 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 with regard to the fact that in the 8F declaration that was uploaded in the KVATIS website, the goods were shown as medicine (other) taxable at 5%, whereas on

physical verification of the goods, the goods were seen to be medicated toilet soaps, that attracted tax at the rate of 14.5%. The respondents therefore, suspected a possible evasion of tax. Counsel for the petitioner would submit that the description in the 8F declaration was a mistake and that the petitioner sells these soaps in Kerala, by collecting tax @14.5%. It is also pointed out that the transportation of the goods was accompanied by valid documents as specified under KVAT Act and further the petitioner is a registered dealer in the State. Taking note of the said submissions, 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 2nd 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

das /18.11.15