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. 34743 of 2015 (P)

PETITIONER :

P.H.ABDUL HAMEED
MG. PARTNER, M/S. UNITED OIL INDUSTRIES
SURYA NAGAR, KUTTAMASSERY
THOTTUMUGHAM P.O., ALUVA.

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANI

RESPONDENT(S) :
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1. THE COMMERCIAL TAX INSPECTOR
   COMMERCIAL TAX CHECK POST, WALAYAR – 678 624.

2. THE STATE OF KERALA
   REPRESENTED BY THE SECRETARY
   TAXES DEPARTMENT, GOVT. SECRETARIAT
   THIRUVANANTHAPURAM, PIN – 695 001.

3. THE COMMISSIONER OF COMMERCIAL TAXES
   GOVERNMENT OF KERALA, TAX TOWER, KARAMANA P.O.,
   THIRUVANANTHAPURAM, PIN – 695 002.

R1 TO R3 BY GOVT. PLEADER SRI. R. RANJITH

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

Mn

WP(C).No. 34743 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER.

EXT.P2 COPY OF THE COMMERCIAL INVOICE NO. 135 DATED 4.11.2015 ACCOMPANIED WITH THE CONSIGNMENT.

EXT.P3 COPY OF THE DETAIL OF E-TOKEN NO. 32150294515/2015-16/1013784 DATED 12.11.2015 GENERATED BY THE PETITIONER.

EXT.P4 COPY OF THE FORM 17A NOTICE NO. OR/805/2/15-16 DATED 12-11-2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P5 COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 14-11-2015.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 34743 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 Till Oil 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 classification of the goods by the petitioner. In the 8F declaration, that accompanied the goods, the item transported was shown as edible oil,

attracting tax at 1%, whereas the goods under transportation was actually Till Oil, which is taxable at 5%. Counsel for the petitioner would submit that the mistake in the declaration was an inadvertent one and the petitioner is actually selling the goods within the State, by collecting tax at the rate of 5%. It is also submitted that, there is no oil, that is subject to tax at 1% in the State, as of today. It is also pointed out that the petitioner is a registered dealer in the State and that the transportation of the goods was accompanied by all the valid documents, that are prescribed under the KVAT Act. Taking note of the said submission, I direct the 1st 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 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

das /18.11.15