IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34942 of 2015 (P)

PETITIONER :

M/S. ELI LILLY AND COMPANY (INDIA) PVT. LTD.,
V/629 C, UNICHIRA, KUZHIVELIL BUILDING, THRIKKAKARA.P.O.,
COCHIN-682 012, REPRESENTED BY ITS BRANCH MANAGER,
SRI.SUBI K. PIUS.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
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1. INTELLIGENCE INSPECTOR,
   SQUAD NO.II, COMMERCIAL TAXES,
   MATTANCHERY AT KARUKUTTY-683 572

2. ASSISTANT COMMISSIONER, COMMERCIAL TAXES,
   SPECIAL CIRCLE-1, ERNAKULAM, COCHIN-682 015

3. COMMISSIONER OF COMMERCIAL TAXES,
   PUBLIC OFFICE BUILDING, NEAR MUSEUM,
   THIRUVANANTHAPURAM-695 033

4. DTDC COURIER & CARGO LTD., A 43/1-608,
   OPP. NORTH RAILWAY STATION, NORTH RAILWAY STATION ROAD,
   COCHIN-682 018, REPRESENTED BY ITS ASST. MANAGER,
   SRI. MANOJ KUMAR.K.R.

R1 TO R3 BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.34942/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE REGISTRATION CERTIFICATE DATED 16/06/2007 UNDER THE VALUE ADDED TAX AND CENTRAL SALES TAX ACTS, ISSUED TO PETITIONER BY 2ND RESPONDENT

P2 COPY OF THE STOCK TRANSFER NOTE NO.2811500158 DATED 11/11/2015 RAISED BY PETITIONER ON ITS HYDERABAD BRANCH, FOR THE TRANSPORT OF 'INSULIN'.

P3 COPY OF THE ONLINE DELIVERY NOTE DATED 11/11/2015 RAISED PURSUANT TO EXT.P2 STOCK TRANSFER INVOICE

P4 COPY OF THE MATERIAL SAFETY DATA SHEET FOR TRANSPORT OF 'INSULIN' FOR TRANSPORT AS AIR CARGO, HANDED OVER TO THE TRANSPORTER BY THE PETITIONER ALONG WITH EXT.P2

P5 COPY OF THE COURIER RECEIPT NO.D25444970 DATED 12/11/2015 ISSUED BY THE TRANSPORTING AGENCY, WHILE BOOKING THE GOODS FOR TRANSPORT

P5(A) COPY OF THE ONLINE DECLARATION DATED 12/11/2015 GENERATED BY PETITIONER AND MADE AVAILABLE TO THE TRANSPORTER FOR TRANSPORT OF THE GOODS AS AIR CARGO.

P5(B) COPY OF THE AIR WAY BILL NO.312-28300801 ISSUED FOR BOOKING THE GOODS BY INDIGO CARGO ISSUED TO THE TRANSPORTER, WHEN IT REACHED COCHIN INTERNATIONAL AIR PORT.

P6 COPY OF THE NOTICE NO.OR 358/15-16 DATED 13/11/2015 ISSUED BY 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT, ALLEGING THAT NO DOCUMENT ACCOMPANIED WITH THE CONSIGNMENT WHEN THE ITS WAS RETURNING TO ERNAKULAM

P7 COPY OF THE REPLY DATED 14/11/2015, SUBMITTED BY THE TRANSPORTER ALONG WITH ORIGINALS OF EXT.P2, P3 AND P5(A) TRANSPORT DOCUMENTS, IN EXPLAINING THE REASON FOR NON PRODUCATION OF TRANSPORT DOCUMENT AT THE TIME OF INTERCEPTION.

RESPONDENT'S EXHIBITS: **NIL**

/TRUE COPY/

sts **P.A.TO JUDGE**

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.34942 of 2015

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Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P6 notice issued to him detaining a consignment of medicine (insulin) 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.P6 detention notice, it is seen that the objection of the respondents is essentially that the goods were being transported without any documents as prescribed under the Kerala Value Added Tax Act. Counsel for the petitioner would submit that the goods that were transported were goods which were taken to the

Cochin International Air Port for being put on board a flight to Hyderabad but the goods could not be put on the said flight on account of non-compliance with certain procedural formalities. Considering the perishable nature of the goods and the need to keep it refrigerated at all times, the petitioner was transporting the said goods back to its premises in Ernakulam and it was during the said leg of transportation that the goods were intercepted by the respondents. It is also pointed out that the original consignment was re- transported back to the premises of the petitioner in two vehicles and the detention was only in respect of one vehicle which unfortunately did not carry the documents that ought to have accompanied the transportation. It is also pointed out that the petitioner is a registered dealer in the State and that the documents in connection with the transportation was made available with the detaining authority within 24 hours of detention.

(ii) Taking note of the said submissions of counsel for the petitioner but finding that the transportation of the goods was without any documents as prescribed under the Kerala Value Added Tax Act, I direct the 1st respondent to release the goods and the vehicle to the petitioner, on the petitioner paying 30% of the security deposit amount demanded in Ext.P6 and furnishing a simple bond without surety for the balance amounts demanded therein before the 1st respondent.

(iii) 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.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/19.11.15