

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 35086 of 2015 (I)

PETITIONER(S):

**SRI.P.S.LAWERENCE (PROPRIETOR),
M/S.GLASS HOUSE, VII/347, MC ROAD JUNCTION,
KALADY, ERNAKULAM-683574.**

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI)

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
TRIVANDRUM-695001.**
- 2. THE INTELLIGENCE INSEPCTOR,
SQUAD NO.VI, DEPARTMENT OF COMMERCIAL TAXES,
COMMERCIAL TAXES FACILITATION CENTRE, ELOOR-683502.**

BY GOVERNMENT PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF COMMERCIAL INVOICE NO.J 150612-490 DATED 6/15
 OF HIGH TECH HARDWARE INDUSTRIAL COMPANY FORSHAN, CHINA**
- EXHIBIT P2 TRUE COPY OF THE FOREIGN CURRENCY REMITTANCE ADVICE
 MEMO ISSUED BY BANK OF INDIA DATED 24/6/15 AND 23/9/15**
- EXHIBIT P3 TRUE COPY OF BILL OF ENTRY NO.3230372 DATED 12/11/15 OF
 DEPUTY COMMISSIONER OF CUSTOMS, KOCHI**
- EXHIBIT P4 TRUE COPY OF THE CUSTOMS CHALAN NO.2013176961 DT.16/11/15 OF
 DEPUTY COMMISSIONER OF CUSTOMS, KOCHI**
- EXHIBIT P5 TRUE COPY OF THE FORM 15 DELIVERY NOTE DATED 16/11/15 FILED
 BY THE PETITIONER**
- EXHIBIT P6 TRUE COPY OF THE FORM 8FA DATED 16/11/15 FILED BY THE
 PETITIONER**
- EXHIBIT P7 TRUE COPY OF THE NOTICE IN FORM 17A DATED 16/11/15 ISSUED BY
 THE R2.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.35086 of 2015

.....
Dated this the 20th 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.P7 notice issued to him detaining a consignment of hardware items 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.P7 detention notice, it is seen that the objection of the respondents is essentially with regard to the classification of the items that were being transported. While the petitioner in the declaration submitted by him had shown the item as coming under the IIIrd schedule, the respondents were of the view that, the item would come under the 5th schedule attracting 14.5% tax. It is the submission of counsel for the petitioner that the

item in question is correctly classified as a hardware item coming under the IIIrd schedule, and further, the petitioner is a registered dealer in the state. It is also pointed out that the transportation was duly accompanied by valid documents as contemplated under the Kerala Value Added Tax Act.

(ii) Taking note of the said submission of counsel for the petitioner, I direct the 2nd respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P7 detention notice.

(iii) 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.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

