

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 35431 of 2015 (D)

PETITIONER(S):

**M/S.FERRO AGENCIES AND HARDWARES,
40/4905, JEWS STREET, FLOWER JUNCTION,
COCHIN-682035, REPRESENTED BY ITS MANAGING PARTNER
SHRI.P.H.SHAJAHAN.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES CHECK POST, WALAYAR-678625.**
- 2. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE, ERNAKULAM,
COCHIN-682018.**
- 3. COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS, KARAMANA P.O.,
THIRUVANANTHAPURAM-695002.**

BY GOVERNMENT PLEADER SRI.R.RENJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF REGISTRATION CERTIFICATE DATED 9.6.15 ISSUED UNDER KVAT & CST ACTS BY R2**
- EXT.P2 - TRUE COPY OF TAX INVOICE NO.35 DATED 31/10/15 FOR THE INTERSTATE PURCHASE OF ALDROP' AND 'HINGES', AGAINST ISSUANCE OF 'C' FORM**
- EXT.P3 - TRUE COPY OF ONLINE DECLARATION NO.320716/PA01/57220/2015 DATED 31/10/15 WHICH WAS ACCOMPANIED WITH EXT.P2 INVOICE.**
- EXT.P4 - TRUE COPY OF NOTICE NO.OR.3222/9A/15-16 DATED 3/11/15 ISSUED TO PETITIONER BY R1 THROUGH THE TRANSPORTING AGENCY, DEMANDING SECURITY DEPOSIT, ALLEGING MISCLASSIFICATION OF GOOD.**
- EXT.P5- TRUE COPY OF REPLY DATED 22/11/15 SENT TO R1 BY E-MAIL, ALONG WITH REVISED ONLINE DECLARATION AGAINST EXT.P4 NOTICE.**
- EXT.P5(A)- TRUE COPY OF REVISED ONLINE DECLARATION DATED 22/11/15 IN FORM NO.8F ATTACHED ALONG WITH EXT.P5 REPLY**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 35431 of 2015

Dated this the 23st 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 Al-drops and Hinges 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 item for the purpose of taxation. While the petitioner had declared the goods as coming under the 3rd Schedule to the KVAT

and attracting tax at 5%, it was the stand of the respondents that the items would attract tax @ 14.5%. Counsel for the petitioner would submit that, in respect of Al-drops and Hinges, he had filed revised declaration, showing the item separately, but he would point out that the items were purchased inter-state against C-forms and therefore, they attracted only a concessional rate of tax. It is also pointed out that the petitioner is a registered dealer in the State. Taking note of the said submission, and finding that the transportation of the goods was covered by documents contemplated under the KVAT Act, I direct the 1st respondent to release the goods 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