

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. 35440 of 2015 (D)

PETITIONER:

**M/S.ICOMM TELE LTD.,
SIVADAS BHAVAN, 281A-29/311-25,
THEKUMBAGHAM PANAKEL TEMPLE ROAD,
NEAR OEN, THIRIPUNITHURA,
ERNAKULAM - 682 301, REPRESENTED BY IT'S
SENIOR EXECUTIVE SMT.SREEREKHA.K.S.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE COMMERCIAL TAX INSPECTOR,
OFFICE OF THE INSPECTING ASSISTANT
COMMISSIONER AT DEPARTMENT OF COMMERCIAL
TAXES(INTELLIGENCE) SQUAD NO.III, THEVARA,
ERNAKULAM - 682 037.**

BY GOVERNMENT PLEADER SM.LILLY.K.T

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

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : THE TRUE COPY OF THE PETITIONER'S LETTER DATED 6.10.2015, DELIVERY CHALLAN SL.NO.2426 DATED 6.10.2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P.LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 8F DATED 8TH OCTOBER 2015 AND FORM 15 DATED 8TH OCTOBER 2015 ISSUED BY THE PETITIONER AND TRANSACTION SLIP DATED 8.10.2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S.JOSH TECH SERVICES P LTD., BANGALORE DATED 7.10.2015 SHOWING CONSIGNER AS THE PETITIONER.
- EXT. P1(A) : THE TRUE COPY OF THE PETITIONER'S LETTER DATED 22.9.2015, DELIVERY CHALLAN SL.NO.2425 DATED 19..2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P.LTD., BANGALORE ALONG WITH IT'S CORRESPONDING FORM 15 DATED 22ND SEPTEMBER 2015 ISSUED BY THE PETITIONER AND AND FORM 8F DATED 22ND SEPTEMBER 2015 AND TRANSACTION SLIP DATED 22.9.2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S.JOSH TECH SERVICES P LTD., BANGALORE DATED 22.9..2015 SHOWING CONSIGNER AS THE PETITIONER.
- EXT. P1(B) : THE TRUE COPY OF THE PETITIONER'S LETTER DATED 18.9.2015, DELIVERY CHALLAN SL.NO.2424 DATED 18.9.2015 ISSUED BY THE PETITIONER COMPANY TO M/S. JOSH TECH SERVICES P.LTD., BANGALORE ALONG WITH IT'S CORRESPONDING E SUGAM ISSUED BY M/S. JOSH TECH SERVICES P.LTD., BANGALORE DATED 18.9.2015 SHOWING CONSIGNER AS THE PETITIONER AND THE FORM 15 DELIVERY NOTE DATED 18TH SEPTEMBER 2015 ISSUED BY THE PETITIONER AND FORM 8F DATED 18TH SEPTEMBER 2015 AND TRANSACTION SLIP DATED 18.9.2015 ISSUED BY THE PETITIONER SHOWING CONSIGNEE AS M/S.JOSH TECH SERVICES P LTD., BANGALORE.
- EXT. P2 : THE TRUE COPY OF THE DETAILS OF GOODS LIST REPAIRED BACK.
- EXT. P3 : THE TRUE COPY OF THE DECLARATION AND DELIVERY NOTE NO.JTS/CA/ICOMM/98 DATED 3.11.2015 AND THE DECLARATION AND DELIVERY NOTE NO.JTS/OK/ICOMM/190 DATED 3.11.2015.
- EXT. P4 : THE TRUE COPY OF THE E SUGAM FORM DATED 17.11.2015.
- EXT. P5 : THE TRUE COPY OF THE DETENTION NOTICE NO.OR 839/2015-16 DATED 20.11.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER IN FORM NO.17A UNDER SECTION 47(2) OF THE KVAT ACT.
- EXT. P6 : THE TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)NO.31286/15 DATED 14.10.2015.

RESPONDENTS' ANNEXURES:

NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 35440 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.P5 notice issued to him detaining a consignment of electronic goods 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.P5 notice, it is seen that the objection of the respondent is essentially with regard to the non production of any materials to support the contention of the petitioner that the items under transportation were goods, that were returned to the

petitioner after repair at Bangalore. Counsel for the petitioner would produce material in the writ petition to substantiate the facts that the goods were being returned after repair at Bangalore and that the onward transportation from Ernakulam to Bangalore was also covered by delivery notes, details of which are produced in the writ petition. It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submission, but finding that the respondents cannot be faulted for detaining the goods in the absence of any material that was available before them to indicate that it was the same goods, that were transported on an earlier occasion, that were being returned after repaired, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petitioner paying 30% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without sureties for the balance 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.

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(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 /23.11.15