

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. 35450 of 2015 (E)

PETITIONER(S):

**M/S. TRV CORPORATION PVT. LTD.,
16/506, NH 47, NETTOOR, COCHIN-682 040,
REPRESENTED BY ITS MANAGING DIRECTOR
SRI.VINOD A.V.**

BY ADV. SRI.TOMSON T.EMMANUEL.

RESPONDENT(S):

- 1. INTELLIGENCE INSPECTOR,
SQUAD NO.3, COMMERCIAL TAXES,
MATTANCHERY AT MINI CIVIL STATION,
ALUVA-682 301.**
- 2. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE,
KALAMASSERY AT KAKKANAD, COCHIN-682 030.**
- 3. COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDING, NEAR MUSEUM,
THIRUVANANTHAPURAM-695 033.**

BY GOVT. PLEADER SMT.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:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE CERTIFICATE OF REGISTRATION DATED 16/07/2015 ISSUED TO PETITIONER, UNDER THE KERALA VALUE ADDED TAX AND CENTRAL SALES TAX ACTS BY 2ND RESPONDENT.
- EXT.P2 COPY OF THE INVOICE NO.415 DATED 20/11/2015 RAISED FOR THE LOCAL SALE OF 5 NOS. OF SLIT AIR CONDITIONERS TO A CUSTOMER IN ERNAKULAM, CHARGED WITH FULL RATE OF TAX.
- EXT.P3 COPY OF THE DELIVERY CHELLAN NO.546 DATED 21/11/2015, RAISED FOR TRANSPORT OF AIR CONDITIONERS BILLED AS PER EXT.P2 INVOICE, FROM NETTOOR BRANCH TO ERNAKULAM.
- EXT.P4 COPY OF THE NOTICE NO.OR/516/15-16 DATED 21/11/2015, ISSUED BY 1ST RESPONDENT IN DETAINING AIR CONDITIONERS TRANSPORTED AS PER EXT.P2 AND P3, U/S. 47(2) OF THE KVAT ACT, RECORDING THE REASON OF CORRECTING DATE IN EXT.P2 INVOICE ACCORDING TO THE DATE IN EXT.P3.
- EXT.P5 COPY OF THE REPLY DATED 22/11/2015, SUBMITTED BY THE PETITIONER, BY E-MAIL TO 1ST RESPONDENT, AGAINST EXT.P4 NOTICE, WITH A REQUEST TO VERIFY THE SERIAL NUMBERS OF AIR CONDITIONERS DETAINED, WITH THAT OF THE DOCUMENTS ACCOMPANIED WITH THE CONSIGNMENT, TO SATISFY THAT THERE IS NO MULTIPLE TRANSPORT.
- EXT.P6 COPY OF THE CIRCULAR NO.30/08 DATED 01/07/2008 ISSUED BY 3RD RESPONDENT, DIRECTING ITS SUB-ORDINATES NOT TO DETAIN GOODS, DEMANDING SECURITY DEPOSIT, FOR TECHNICAL DEFECTS, IF THE GOODS ARE UNDERTAKEN BY A REGISTERED DEALER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35450 of 2015
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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 Air Conditioners 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 fact that the date of invoice that accompanied the goods was seen to have been corrected to make it confirm to Ext.P3 delivery Chellan. Counsel for

the petitioner would submit that the invoice was dated 20.11.2015, but the goods could be transported only the next day and it is accordingly that the delivery Challan was prepared on 21.11.2015. There is no dispute that at the time of detention, the goods were covered by valid invoice and the serial number of the goods as shown in the invoice will match with the serial number in the delivery Challan, that accompanied the goods, as also the serial number shown on the goods concerned. It is also pointed out that the petitioner is a registered dealer in the State. 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, after verifying the serial number of the machines to see whether they tally with the serial number shown in the invoice and the delivery Challan.

(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.

W.P.(C). No. 35450 of 2015

(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 /23.11.15