IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C).No. 35507 of 2015 (K)

PETITIONER(S):

A.M.SUBAIR, AGED 46 YEARS,
S/O.MOHAMMED, PROPRIETOR,
M.S.A.M.S. INDUSTRIES, V.P. XIII/640 B,
MUKKUTTINADA, PONJASSERY P.O.,
PERUMBAVOOR.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN
SMT.UMMUL FIDA

RESPONDENT(S):

COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR - 676 626.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 35507 of 2015 (K)
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APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER UNDER KERALA VALUE ADDED TAX RULES, 2005.

EXT.P2: ATRUE COPY OF THE NOTICE DTD.22.11.2015 BEARING OR NO.346/15-16 ISSUED BY THE RESPONDENT.

EXT.P3: ATRUE COPY OF THE INVOICE NO.43 DTD.21.11.2015 ISSUED BY PETITIONER.

EXT.P4: ATRUE COPY OF THE DELIVERY NOTE BEARING SL.NO.321512/DN/31028/2015 ISSUED BY THE PETITIONER.

EXT.P5: ATRUE COPY OF THE ADVANCE TAX UTILIZATION RECEIPT IN FORM NO.8F DTD.21.11.2015 BEARING TOKEN NO.32151276382/2015-16/1132698.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C) No.35507 of 2015
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Dated this the 24th day of November 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P2 detention notice issued to him detaining a consignment of Plywood 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 for the petitioner and also the learned Government Pleader for the respondent.

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.P2 notice, it is seen that the objection of the respondent is essentially that the quantity of goods that was being transported was stated differently in the invoice that accompanied

the transportation of the goods as also in the delivery note and the Form 8F declaration. It is stated that while the invoice showed a higher quantity, the delivery note and the form 8F declaration showed a lesser quantity. Counsel for the petitioner would submit that the clerical mistake in noting the figures occurred when the 8F declaration and the delivery note were prepared based on the invoice, and in the invoice the correct figure representing the quantity of goods sold is indicated. It is also also pointed out that the petitioner who is a registered dealer within the State has paid tax on the quantity shown in the invoice and therefore there was no attempt at evasion of tax. Taking note of the said submission of counsel for the petitioner, and finding that the goods were covered by valid documents as contemplated under the KVAT Act, I direct the respondent to release the goods and vehicle covered by Ext.P2 notice, to the petitioner, subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P2 notice, before the respondent.

(ii) The 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 respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/