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. 35533 of 2015 (N)

PETITIONER(S) :

EXCELSIOR MOTORS PVT.LTD.,
NH.47, VYTTILA, AROOR BY PASS ROAD,
MARADU, KOCHI, PIN- 682 304,
REPRESENTED BY ITS DIRECTOR, SRI.BHARATH.K.PATEL.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S) :

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1. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, WALAYAR,
   PALAKKAD DISTRICT- 678 624.

2. ASSISTANT COMMISSIONER (ASSESSMENT),
   COMMERCIAL TAXES, SPECIAL CIRCLE-III, THEVARA,
   KOCHI- 682 015.

BY GOVERNMENT PLEADER SRI.R.RENJITH

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

Msd.

WP(C).No. 35533 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: COPY OF REGISTRATION CERTIFICATE.

EXHIBIT P2: COPY OF INVOICE DATED 30.10.2015.

EXHIBIT P3: COPY OF DECLARATION IN FORM 8F DATED 20.11.2015.

EXHIBIT P4: COPY OF NOTICE DATED 20.11.2015 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.35533 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.P4 detention notice issued to him detaining a consignment of Hand tools 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.P4 notice, it is seen that the objection of the respondent is essentially that the item under transportation was mis-classified by the petitioner. While the 8F declaration showed

the goods as hand tools attracting tax @ 0% in the state, it was found that the goods under transportation would attract tax @ 14.5%. Counsel for the petitioner would submit that he had purchased the goods from outside the state, for his own use and the liability to pay tax was on the supplier of the goods in terms of CST Act. It is pointed out therefore that there was no attempt at evasion of tax by the petitioner. Taking note of the said contention of counsel for the petitioner, and the fact that the petitioner is a registered dealer within the State and further noting that the transportation of the goods was duly accompanied by valid documents under the KVAT Act, I direct the 1st respondent to release the goods and vehicle covered by Ext.P4 notice, to the petitioner, subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P4 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

sm/