IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 35617 of 2015 (B)

PETITIONER:

M/S. PEEJAY AGRO FOODS PRIVATE LIMITED,
WEST NADA, GURUVAYOOR,
REPRESENTED BY ITS MANAGING DIRECTOR,
C.PADMAKUMAR.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT:

COMMERCIAL TAX INSPECTOR,
COMMERCIAL CHECKPOST, WALAYAR - 678 624.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 35617 of 2015 (B)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER DATED 30.6.2015.

EXT. P2 : TRUE COPY OF THE INVOICE NO.037 DATED 18.11.2015.

EXT. P3 : TRUE COPY OF THE INVOICE NO.038 DATED 18.11.2015.

EXT. P4 : TRUE COPY OF THE NOTICE NO.OR.3361/8/15-16 DATED 20.11.2015 ISSUED BY RESPONDENT UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT.

EXT. P5 : TRUE COPY OF THE NOTICE NO.OR.3362/8/15-16 DATED 20.11.2015 ISSUED BY RESPONDENT UNDER SECTION 47(2) OF THE KERALA VALUE ADDED TAX ACT.

EXT. P6 : TRUE COPY OF THE ADVANCE TAX UTILIZATION RECEIPT DATED 21.11.2015.

EXT. P7 : TRUE COPY OF THE ADVANCE TAX UTILIZATION RECEIPT DATED 21.11.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 35617 of 2015

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Dated this the 25th day of November, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Exts.P4 & P5 notices issued to him detaining a consignment of Granite Slabs 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 Exts.P4 & P5 notices, it is seen that the objection of the respondent is essentially that one of the invoices that accompanied the transportation of the goods indicated that the goods were meant for own use of the petitioner, whereas

the petitioner had not followed the procedure laid down for transport of the goods for own use as per Circular No.14 of 2007. Counsel for the petitioner would submit that the declaration in one of the invoices to the effect that the goods were meant for own use of the petitioner was a mistake and the petitioner purchased the goods for trading purposes. It is also pointed out that, while purchasing the goods under transportation, the petitioner had not availed of any concessional rate of tax by issuing any C-forms to the supplying dealer and the full rate of tax was paid. It was also pointed out that advance tax has also been paid in respect of the consignment at the full rate. Taking note of the said submission, and also taking into account the fact that the petitioner is a registered dealer, I direct the 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 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

das /25.11.15