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. 35659 of 2015 (F)

PETITIONER :

P.C. GEORGE
M/S. UNITED GLASS EMPORIUM
THRISSUR ROAD
IRINJALAKUDA – 680 121.

BY ADVS.SRI.P.N.DAMODARAN NAMBOOTHIRI
SMT.K.P.RANI
SRI.P.UNNIKRISHNAN (THRISSUR)

RESPONDENT(S) :
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1. **THE COMMERCIAL TAX INSPECTOR**
   COMMERCIAL TAX CHECK POST, WALAYAR – 678 625.

2. **THE COMMERCIAL TAX OFFICER**
   COMMERCIAL TAXES CHECK POST
   WALAYAR – 678 625.

3. **THE COMMERCIAL TAX OFFICER**
   DEPARTMENT OF COMMERCIAL TAXES
   IRINJALAKUDA – 680 121.

R1 TO R3 BY GOVT. PLEADER SRI. R. RANJITH

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

Mn

WP(C).No. 35659 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	**COPY OF THE REGISTRATION CERTIFICATE UNDER KERALA VALUE ADDED TAX ACT TIN NO. 32080957942C DATED 30.11.2013.**
EXT.P2		**COPY OF THE INVOICE NO. 030-15/16 DATED 26/10/2015 AN AMOUNT OF RS. 1,43,687/- ISSUED BY M/S. ASIAN BRASS PRODUCTS, UDYOGNAGAR, JAMNAGAR TO THE PETITIONER.**
EXT.P2A		**COPY OF THE INVOICE NO. 031-15/16 DATED 26/10/2015 AN AMOUNT OF RS. 1,02,810/- ISSUED BY M/S. ASIAN BRASS PRODUCTS, UDYOGNAGAR, JAMNAGAR TO THE PETITIONER.**
EXT.P3		**COPY OF THE L.R. NOS. 4505711 DATED 28-10-2015 ISSUED BY THE CONSIGNOR TO THE PETITIONER.**
EXT.P3A		**COPY OF THE LR NO. 4505710 DATED 28-10-2015 ISSUED BY THE CONSIGNOR TO THE PETITIONER.**
EXT.P4		**COPY OF THE TRANSACTION SLIP BEARING NO. 320809/PA01/11019/2015 DATED 27-10-2015 BY WAY OF E-FILING, BY THE PETITIONER BEFORE THE CHECK POST AUTHORITIES.**
EXT.P4A		**COPY OF THE TRANSACTION SLIP BEARING NO. 320809/PA01/11022/2015 DATED 27-10-2015 BY WAY OF E-FILING, BY THE PETITIONER BEFORE THE CHECK POST AUTHORITIES.**
EXT.P5		**COPY OF THE NOTICE NO. OR/3240/9/15-16 DATED 5-11-2015 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.**
EXT.P6		**COPY OF THE REPLY DATED 6-11-2015 FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.**
EXT.P7		**COPY OF THE CONCERNED PAGE OF THE SITE PUBLISHED BY THE TAXES DEPARTMENT.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35659 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 Ext.P5 notice issued to him detaining a consignment of Brass bearing Hinges and Brass Power Bolt 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 classification of the items for the purpose of tax. While the petitioner had declared the

commodity as attracting tax @ 5% under the KVAT Act, the respondents were of the view that the item would attract tax @ 14.5%. Counsel for the petitioner would submit that he is a registered dealer in the State and the transaction in question is an inter-state sale, in which the tax liability was discharged by the vendor outside the State. Taking note of the said submission, and finding that the transportation of the goods was otherwise in order being accompanied by valid documents as contemplated under the KVAT Act, I direct the 1st respondent to release the goods in 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.

(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

das /25.11.15