IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 35810 of 2015 (A)

PETITIONER(S):

M/S. STERLING AND WILSON (P) LTD.,
1ST FLOOR, KRISHNA TOWERS,
OPP. THRIKKAKARA TEMPLE, THRIKKAKARRA POST,
ERNAKULAM - 682 021, REPRESENTED BY
ITS ASSISTANT MANAGER-FINANCE &
ACCOUNTS MR.SREEKUMAR.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY,
   SECRETARIAT, TRIVANDRUM - 195 001.

2. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECKPOST, WALAYAR - 678 103.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 35810 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEVELOPMENT COMMISSIONER, CYBER PARK, SPECIAL ECONOMIC ZONE, KOZHIKODE DTD.14TH JULY 2015.

EXT.P2: THE TRUE COPY OF THE TAX INVOICE ISSUED BY YM ENTERPRISES, VIDE INVOICES NO.25488 DTD.27 OCTOBER 2015 AND INVOICE NO.25489 DATED 27 OCTOBER 2015.

EXT.P3: THE TRUE COPY OF TH EFORM 8F DTD.29TH OCTOBER 2015 AND DATED 30TH OCTOBER 2015 ISSUED BY THE PETITIONER COMPANY.

EXT.P4: THE TRUE COPY OF THE DETENTION NOTICE NO.OR/3227/104/15-16 DTD.4.11.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35810 of 2015
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Dated this the 26th 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 MS Channels, Angles, Paint, Red Oxide, Thinner and Brush, 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 that the petitioner had declared all the items as attracting only 5% tax. It was found by the respondents

however, that some of the items attracted tax @ 14.5% and the petitioner had declared the items as iron, steel and its products, in the 8F declaration submitted by him. The respondents, therefore, suspected a possible attempt of evasion of tax. Counsel for the petitioner would submit that the items had suffered CST @ 2% against the C-forms supplied by the petitioner and at any rate, the goods were meant for supplying to the Special Economic Zone, Kozhikode, and therefore, there would be no tax implication in respect of the subsequent sale of the product to the SEZ unit. It is also stated that the petitioner is a registered dealer in the State. Taking note of the said submission, I direct the 2nd 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 2nd respondent.

(ii) The 2nd 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 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /26.11.15