

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 35899 of 2015 (J)

PETITIONER:

**KASIM K.P,
M/S.ENKAY VENEERS & PLYWOODS,
KAITHAKKAD, PATTIMATTOM.P.O.,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER,
2ND CIRCLE, PERUMBAVOOR - 683 542.**
- 2. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
KUNHIPPALLY, P.O.CHOMBALA,
KOZHIKODE - 673 308.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1 : COPY OF INVOICE NO.42 ISSUED BY THE PETITIONER FOR A
CUSTOMER AT MANGALORE DATED 24.11.2015.
- EXT.P2 : COPY OF FORM NO.8F DECLARATION OF THE CONSIGNOR
DATED 24.11.2015.
- EXT.P3 : COPY OF NOTICE IN FORM NO.17A ISSUED BY THE 2ND RESPONDENT
DATED 25.11.2015.
- EXT.P4 : COPY OF FORM NO.15 DELIVERY NOTE GENERATED BY THE
PETITIONER DATED 25.11.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 35899 of 2015

Dated this the 27th day of November, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P3 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 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.P3 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the notified goods were not accompanied by online delivery note and further the goods were found not to have been declared at the commercial tax check post, Feroke on its way to Mangalore. Counsel for the petitioner would submit

that although the online delivery note was not generated, it is not in dispute that the form 8F declaration in electronic format was uploaded on to the KVATIS website even before the transportation of the goods had commenced. He refers to Ext.P2 online declaration in form 8F, to show that the necessary details such as the nature of transaction, commodity, invoice number, quantity, weight and value have already been declared in the online declaration and therefore, the mere fact that the online delivery note did not accompany the goods was of no significance. It is also pointed out that the non declaration of the vehicle at the check post Feroke, was on account of the fact that the vehicle had taken a different route for its journey to Mangalore and did not necessarily have to pass the Check post Feroke, for its movement to Mangalore. The petitioner is also a registered dealer in the State. Taking note of the said submission, and finding that in the matter of accompanying documents, there were substantial compliance with the requirements under the KVAT Act, 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