

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. 36045 of 2015 (E)

PETITIONER(S):

**ROSA OVERSEAS, BROTHERS COMPLEX,
VM 19/379 C, NEW BUS STAND, VATAKARA,
KOZHIKODE DISTRICT, PIN-683104,
REPRESENTED BY ITS PARTNER SRI.SHABEER V.**

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

RESPONDENT(S):

- 1. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR,
PALAKKAD DISTRICT-678624.**
- 2. THE COMMERCIAL TAX OFFICER,
VATAKARA, KOZHIKODE DISTRICT, PIN-683104.**

BY GOVERNMENT PLEADER SRI.R.RENJITH

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

PJ

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: COPY OF REGISTRATION CERTIFICATE

**EXHIBIT P1(A): COPY OF CERTIFICATE OF IMPORTER-EXPORTER CODE DATED
15/1/14 ISSUED BY THE DIRCTOR GENERAL OF FOREIGN TRADE**

**EXHIBIT P2: COPY OF THE INVOICE DATED 16/10/15 ISSUED BY M/S.RAF GLOBAL
AGENCY CO.LTD., CHINA**

EXHIBIT P3: COPY OF BILL OF LADING DATED 29/10/15

EXHIBIT P4: COPY OF BILL OF ENTRY DATED 21/11/15

EXHIBIT P5: COPY OF KK FORM DATED 23/11/15

EXHIBIT P6: COPY OF DELIVERY NOTE DATED 25/11/15 IN FORM 15

EXHIBIT P7: COPY OF DECLARATION IN FORM 8F DT.25/11/15

EXHIBIT P8: COPY OF DECLARATION IN FORM 8FA DT.25/11/15

EXHIBIT P9: COPY OF NOTICE DATED 25/11/15 ISSUED BY THE R1

EXHIBIT P10: COPY OF REPLY DATED 26/11/15.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.36045 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.P9 detention notice issued to him detaining a consignment of Furniture 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.P9 notice, it is seen that the objection of the respondent is essentially with regard to the valuation of the goods that was being transported. The respondents found that the goods were being transported, after their

import and in the invoice, that had accompanied the transportation of the goods, the customs duty as also the other charges connected with import are not being included. The respondents to above, suspected a possible evasion of tax. Counsel for the petitioner would submit that the petitioner is a registered dealer within the State and the transportation of the goods was duly accompanied by valid documents as contemplated under the KVAT Act. It is stated however that, there is no provision in the invoices raised on the petitioner, to include separately, the customs duty paid in respect of the goods. At any rate, it is submitted that since the transportation of the goods was in accordance with the provisions of the KVAT Act, there is no justification for the detention of the goods. Taking note of the said submission of counsel for the petitioner, I direct the 1st respondent to release the goods and vehicle covered by Ext.P9 notice, to the petitioner, subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P9 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/