IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 36163 of 2015 (U)

PETITIONER :

PADATHARA AGENCIES,
33/422, CARBORANDUM ROAD, MAJOR INDUSTRIAL ESTATE,
SOUTH KALAMASSERY, ERNAKULAM,
KOCHI-683 109.(REPRESENTED BY PROPRIETOR
SRI.ANTONY FRANCIS)

BY ADVS.SRI.K.N.SREEKUMARAN
SMT.V.P.SEENA DEVI
SRI.JOEMON SEBASTIAN

RESPONDENT :

COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR-676 623.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C).No. 36163 of 2015 (U)
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APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF THE TIN CERTIFICATE DT 29-1-2014 ISSUED BY THE COMMERCIAL TAX OFFICER, KVAT CIRCLE-I, KALAMASERRY.

P2 : TRUE COPY OF THE INVOICE NO.2610 DT 13-11-2015 ISSUED BY M/S.P.H.TRADERS, LUDHIYANA TO PETITIONER.

P3 : TRUE COPY OF THE DECLARATION IN FORM 8F WITH TOKEN NO.32160958525/2015-16/1066183.

P4 : TRUE COPY OF THE NOTICE OR 3372/9/15-16 DT 24-11-2015 ISSUED BY THE RESPONDENT.

P5 : TRUE COPY OF THE CERTIFICATE DT 23-11-2015 ISSUED BY THE COMMERCIAL TAX OFFICER, 1ST CIRCLE, KALAMASSERY TO PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.36163 of 2015

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Dated this the 2nd day of December, 2015

J U D G M E N T

A consignment of iron and steel items meant for scaffolding purposes, that was being transported at the instance of the petitioner, was detained by the respondent. Ext.P4 is the detention notice. 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 for the petitioner and also the learned Government Pleader for the respondent.

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.P4 detention notice, it is seen that the objection of the respondent is essentially with regard to classification of the item for the purposes of tax. While the petitioner had indicated in the invoice as well as in the 8F declaration that the

goods under transportation were iron and steel items taxable at 5%, the respondents were of the view that the item would merit classification as automobile parts taxable at the rate of 14.5%. Counsel for the petitioner would submit that, the petitioner is a registered dealer and the items in question were procured from Ludhiana for the purposes of business of transfer of right to use scaffolding materials. It is also pointed out that, the transportation of the goods was duly accompanied by valid documents as contemplated under the Kerala Value Added Tax Act.

(ii) Taking note of the said submission of counsel for the petitioner, I direct the respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P4 detention notice.

(iii) 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.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/02.12.15