

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. 36415 of 2015 (B)

PETITIONER(S):

**VAISHNAV GOPINATH, AGED 20 YEARS,
S/O.GOPINATH, PROPRIETOR, DAWN TRADE LINKS,
RESIDING AT GOKULAM, CHELORA AMSOM,
PERINGALAYI DESOM, P.O.KAPPAD, KANNUR DISTRICT.**

**BY ADVS.SRI.A.KRISHNAN
SRI.P.U.SHAILAJAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
COMMERCIAL TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. COMMERCIAL TAXES OFFICER,
COMMERCIAL TAXES CHECK POST, VALAYAR,
PALAKKAD-678624.**

BY GOVERNMENT PLEADER SRI.RENJITH

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

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA, DATED 22/6/15
- EXT.P-2:** TRUE COPY OF THE ORDER ISSUED BY THE SECRETARY, CHELORA GRAMA PANCHAYATH DATED 5/10/15
- EXT.P3:** TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE COMMERCIAL TAXES DEPARTMENT DATED 9/11/15
- EXT.P4:** TRUE COPY OF THE TAX INVOICE WITH NO.438 DATED 27/11/15
- EXT.P5:** TRUE COPY OF THE FORM NO.16 DECLARATION (CERTIFICAT OF OWNERSHIP) SUBMITTED BY THE PETITIONER.
- EXT.P6:** TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER CHELORA STATING THAT THE MACHINERIES ARE FOR THE OWN PURPOSE OF THE PETITIONER
- EXT.P7:** TRUE COPY OF THE NOTICE DATED 28/11/15 ISSUED BY THE R2
- EXT.P8:** TRUE COPY OF THE EXPLANATION FOR EXHIBIT P7 NOTICE.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 36415 of 2015

Dated this the 2nd day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P7 notice issued to him detaining a consignment of Oven, Compressor, Drier etc. 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.P7 notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item for the purposes of tax. While the petitioner had declared the item as taxable at the rate of 5% as machinery that was going to be installed in his industrial premises, respondents were of the view that the goods would

attract tax at 14.5%. Counsel for the petitioner would submit that the goods in question were required for the purposes of his industrial unit as machinery and it was not meant for resale. It is also submitted that the petitioner is a registered dealer in the State, in respect of sale of aluminum powder coated material. Taking note of the said submission of counsel for the petitioner, I direct the 2nd respondent to release the goods 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