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. 36484 of 2015 (I)

PETITIONER:

M/S.EURO AGENCIES, 39/3729,
RAVIPURAM ROAD, RAVIPURAM JUNCTION,
ERNAKULAM - 682 016, REPRESENTED BY IT'S
MANAGING PARTNER SMT.RAJASHREE SETHUNATH.

BY ADVS.SMT.K.LATHA
SMT.M.K.HAJARA

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY,
   SECRETARIAT, TRIVANDRUM - 695 001.

2. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECKPOST,
   WALAYAR - 678 102.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

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

mbr/

WP(C).No. 36484 of 2015 (I)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : **THE TRUE COPY OF THE RETAIL INVOICE CUM DELIVERY CHALLAN NUMBER 1596000396 DATED 27TH NOVEMBER 2015 ISSUED BY M/S.CANON INDIA P LTD., CHENNAI TO THE PETITIONER.**

EXT. P2 : **THE TRUE COPY OF THE FORM 8F DATED 28TH NOVEMBER 2015 AND ISSUED BY THE PETITIONER COMPANY.**

EXT. P3 : **THE TRUE COPY OF THE DETENTION NOTICE NO.OR/3433/9/15-16 DATED 30.11.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER.**

RESPONDENTS' EXHIBIT: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 36484 of 2015
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Dated this the 2nd day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P3 notice issued to him detaining a consignment of Digital Multi-function Printers, 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 classification of the item for the purposes of tax. While the petitioner had declared the item as taxable at the rate of 5%, the respondents were of the view that the item would attract tax at 14.5%. Counsel for the petitioner

would submit that the goods are correctly classifiable under the 3rd Schedule and therefore, liable to tax at the rate of 5%. It is also pointed out that the petitioner is a registered dealer and the transaction being an inter-state sale, the tax liability in respect of present transportation was on the seller located outside the State. 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

das /2.12.15