

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937**

**WP(C).No. 36537 of 2015 (N)**  
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**PETITIONER:**  
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**P.ABDUL LATHEEF,  
M/S.HARSHIN ENTERPRISES, 9/419K,  
POONTHALA BUILDING, PAN BAZAR,  
MAVUNKUNNU ROAD, TIRUR - 676 101.**

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

**RESPONDENT(S):**  
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- 1. THE ASST.COMMISSIONER (ASSESSMENT),  
COMMERCIAL TAXES SPECIAL CIRCLE,  
MALAPPURAM - 676 505.**
- 2. THE INTELLIGENCE INSPECTOR, SQUAD NO.VI,  
DEPARTMENT OF COMMERCIAL TAXES,  
KASARGOD - 671 121.**

**BY GOVERNMENT PLEADER SRI.R.RANJITH**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

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**APPENDIX**

**PETITIONERS' EXHIBITS:**

- EXT. P1 : COPY OF INVOICE NO.441 ISSUED BY THE DUGAR OVERSEAS  
PVT.LTD., NEW DELHI DATED 27.11.2015.
- EXT. P1(A) : COPY OF INVOICE NO.231/15-16 ISSUED BY SUPERNESSE FOODS  
PVT.LTD., INDORE DATED 19.11.2015.
- EXT. P2 : COPY OF NOTICE IN FORM NO.17A ISSUED BY THE  
2ND RESPONDENT DATED 1.12.2015.
- EXT. P2(A) : COPY OF NOTICE IN FORM NO.17A ISSUED BY THE  
2ND RESPONDENT DATED 1.12.2015.
- EXT. P3 : COPY OF JUDGMENT IN WP(C)NO.28634/2015 OF THIS HON'BLE  
COURT DATED 23.9.2015.

**RESPONDENTS' EXHIBITS:** NIL.

//TRUE COPY//

P.S. TO JUDGE

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**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No. 36537 of 2015**  
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Dated this the 3<sup>rd</sup> day of December 2015

**JUDGMENT**

The petitioner is aggrieved by Exts.P2 and P2(a) detention notices issued to him, detaining a consignment of confectionery, 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 appearing for the petitioner and also the learned Government Pleader appearing 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 Exts.P2 and P2(a) notices, it is seen that the objection of the respondents is essentially with regard to the classification of the product by the consignor. It is the stand of the

respondents that the goods were declared as "confectionery unbranded", whereas, the goods, on verification, were found to bear a trade mark which evidenced that the product is registered under the Trade and Merchandise Marks Act, 1999, and therefore branded goods that were taxable @ 14.5%. Counsel for the petitioner would submit that there is a serious dispute with regard to classification of the item insofar as he had made a declaration based on the HSN classification that was declared by the manufacturer of the goods. There is also no dispute that the transportation of the goods was covered by a valid invoice and further the petitioner is a registered dealer within the State. Taking note of the said submission, I direct the 2<sup>nd</sup> respondent to release the goods and the vehicle subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Exts.P2 and P2(a) notices, before the 2<sup>nd</sup> respondent.

(ii) The 2<sup>nd</sup> 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, untrammelled by the observations in this judgment

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2<sup>nd</sup> respondent.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

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