IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 36869 of 2015 (G)

PETITIONER(S):

SEBY ANTONY, PROPRIETOR,
CITY SHOES, KOORANS AVENUE,
IV/254B, THRISSUR ROAD, ANGAMALY-683 572,
ERNAKULAM DISTRICT.

BY ADVS.SRI.TOMSON T.EMMANUEL,
SRI.JENSON FRANCIS PAYANKAN.

RESPONDENT(S):
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1. COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAXES CHECK POST,
   WALAYAR-678 625.

2. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES CHECK POST,
   WALAYAR-678 625.

3. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, ANGAMALY-683 572.

4. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWERS, KARAMANA P.O.,
   THIRUVANANTHAPURAM-695 002.

BY GOVT. PLEADER SRI.RANJITH. R.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 36869 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE REGISTRATION CERTIFICATE DATED 31/05/2007 ISSUED UNDER KVAT & CST ACTS BY 3RD RESPONDENT.
EXT.P2	COPY OF THE E-RETURN DATED 14/11/2015 SUBMITTED FOR THE MONTH OF OCTOBER 2015.
EXT.P3	COPY OF THE TAX INVOICE NO.355 DATED 02/11/2015 RAISED BY A SUPPLIER FOR INTERSTATE PURCHASE OF FOOT WEARS.
EXT.P3A	COPY OF THE TAX INVOICE NO.369 DATED 06/11/2015 RAISED BY A SUPPLIER FOR INTERSTATE PURCHASE OF FOOT WEARS.
EXT.P4	COPY OF THE ONLINE DECLARATION DATED 02/11/2015 GENERATED BY PETITIONER ON THE BASIS OF EXT.P3 TAX INVOICE.
EXT.P4A	COPY OF THE ONLINE DECLARATION DATED 09/11/2015 GENERATED BY PETITIONER ON THE BASIS OF EXT.P3A TAX INVOICE.
EXT.P5	COPY OF THE NOTICE NO.OR.3292/9/15-16 DATED 13/11/2015 ISSUED TO PETITIONER, THROUGH THE TRANSPORTING AGENCY, BY 1ST RESPONDENT DEMANDING SECURITY DEPOSIT, ALLEGING MISCLASSIFICATION OF GOODS.
EXT.P5A	COPY OF THE NOTICE NO.OR.3314/9/15-16 DATED 16/11/2015 ISSUED TO PETITIONER, THROUGH THE TRANSPORTING AGENCY, BY 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT, ALLEGING MISCLASSIFICATION OF GOODS.
EXT.P6	COPY OF THE REPLY DATED 30/11/2015 SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT AGAINST EXT.P5 AND P5(A) NOTICES.
EXT.P6A	COPY OF THE REVISED ONLINE DECLARATION DATED 27/11/2015 IN DECLARING GOODS TRANSPORTED AS PER EXT.P3 INVOICE, ATTACHED ALONG WITH EXT.P6 REPLY.
EXT.P6B	COPY OF THE REVISED ONLINE DECLARATION DATED 27/11/2015 IN DECLARING GOODS TRANSPORTED AS PER EXT.P3(A) INVOICE, ATTACHED ALONG WITH EXT.P6 REPLY.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.36869 of 2015

....

Dated this the 4th day of December, 2015

J U D G M E N T

Consignments of footwear that were being transported at the instance of the petitioner were detained by the respondents. Exts.P5 and P5(a) are the detention notices. 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 notices 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 Exts.P5 and P5(a) detention notices, it is seen that the objection of the respondents is essentially with regard to the classification of the item for the purposes of tax. Footwear with an MRP less than 500 rupees attracts tax at the rate of 5% whereas footwear with an MRP above 500 rupees attracts tax at the rate of 14.5%. The objection of the respondents is essentially with regard to the category of the footwear that was being transported. Counsel for

the petitioner submits that the rate of tax paid in respect of the footwear is correct and that when the petitioner sells the footwear in the State, the tax is collected in accordance with the rate prescribed depending upon whether the MRP value of the footwear is less or more than 500 rupees. The petitioner is also a registered dealer in the State.

(ii) Taking note of the said submission of counsel for the petitioner, I direct the 1st respondent to release the goods covered by Exts.P5 and P5(a) notices to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in the said notices.

(iii) 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.

(iv) 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

mns/4.12.15