

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 37123 of 2015 (M)

PETITIONER(S):

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

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

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-1.**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR-678 101.**

BY GOVT. PLEADER SRI.R. RANJITH.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE RETAIL INVOICE CUM DELIVERY CHALLAN
NUMBER 1596000394 DATED 27TH NOVEMBER 2015 ISSUED
M/S.CANON INDIA P. LTD., CHENNAI TO THE PETITIONER.
- EXT.P2 COPY OF THE FORM 8F DATED 28TH NOVEMBER 2015
AND TRANSACTION SLIP DATED 28TH NOVEMBER 2015
ISSUED BY THE PETITIONER COMPANY.
- EXT.P3 COPY OF THE DETENTION NOTICE NO.OR/3432/9/15-16
DATED 30/11/2015 ISSUED BY THE SECOND RESPONDENT
U/S. 47(2) OF THE KVAT ACT TO THE PETITIONER.
- EXT.P4 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WP(C).NO.36484/2015 DATED 2ND DAY OF DECEMBER 2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 37123 of 2015

Dated this the 8th day of December 2015

JUDGMENT

A consignment of Digital Multi-function Printers, that was being transported at the instance of the petitioner was detained by the respondents. Ext.P3 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 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

sm/

