IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 37239 of 2015 (D)

PETITIONER(S) :

COCHIN SANITARY STORES,
40/3388, T.D.ROAD, ERNAKULAM, KOCHI- 682 031,
REPRESENTED BY ITS PARTNER K.J.SUDHAKARA KAMMATH.

BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL

RESPONDENT(S) :

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1. **COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, WALAYAR- 676 276.

2. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAX CHECK POST, WALAYAR- 676 276.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 37239 of 2015 (D)
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APPENDIX

PETITIONER(S)' EXHIBITS :
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EXHIBIT P1: **TRUE COPY OF THE INVOICE NO.2570 DATED 27.11.2015.**

EXHIBIT P2: **TRUE COPY OF THE NOTICE NO.OR/3467/9A/15-16 DATED 05.12.2015.**

EXHIBIT P3: **TRUE COPY OF THE EXPLANATIONS SUBMITTED BY THE PETITIONER DATED 07.12.2015.**

EXHIBIT P4: **TRUE COPY OF THE JUDGMENT IN O.T. APPEAL NO.5/2006 DATED 26.05.2008.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.37239 of 2015

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Dated this the 9th day of December 2015

JUDGMENT

A consignment of Bath fittings, that was being transported at the instance of the petitioner was detained by the respondents. Ext.P2 is the detention notice. 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 as also the submissions made across the bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P2 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 classified the item as brass articles, the respondents were of the view that the items would merit classification as bath fittings, attracting tax @ 14.5%. Counsel for the petitioner would submit that the classification of the product is correct and he sells the items locally as brass articles, collecting 5% tax. It is also pointed out that the petitioner is a registered dealer within the State. Taking note of the said submission of counsel for the petitioner, I direct the 1st 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 1st respondent.

(ii) 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.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/