IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 37483 of 2015 (I)

PETITIONER(S) :

M/S.VIOM NETWORKS LTD., AGED 45 YEARS
MANIMALA ROAD, EDAPALLY, COCHIN,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.SANTHOSH KUMAR.M.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT(S) :

THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR- 678 624.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 37483 of 2015 (I)
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APPENDIX

PETITIONER(S)' EXHIBITS :
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EXHIBIT P1: A TRUE COPY OF THE REGISTRATION CERTIFICATE ALONG WITH THE LIST OF EQUIPMENTS.

EXHIBIT P2: TRUE COPY OF THE INVOICE DATED 29.11.2015.

EXHIBIT P3: TRUE COPY OF FORM 8F DECLARATION DATED 30.11.2015.

EXHIBIT P4: TRUE COPY OF THE NOTICE DATED 02.12.2015.

EXHIBIT P5: TRUE COPY OF THE REPLY DATED 04.12.2015.

EXHIBIT P6: TRUE COPY OF THE FORM 8F DATED 03.12.2015.

RESPONDENT(S)' EXHIBITS :
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 37483 of 2015

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Dated this the 10th day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P4 notice issued to him detaining a consignment of Batteries of various types and parts 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.P4 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, who is a provider of Passive Infrastructural Services, had declared the

commodity as capital goods attracting tax @ 5%, the respondent were of the view that the goods would merit classification as Batteries attracting tax @ 14.5%. Counsel for the petitioner would submit that the items in question are meant for installation as part of the telecommunication tower and equipments and therefore, it is part of the capital infrastructure and it is not for re-sale as batteries. It is also pointed out that the petitioner is a registered dealer under the KVAT Act. Taking note of the said submission of counsel for the petitioner and finding that the transportation of the goods was otherwise in accordance with the provisions under the KVAT Act, I direct the 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 respondent.

(ii) The 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 respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /10.12.15