

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 38226 of 2015 (C)

PETITIONER:

**TARACHAND GYARSILAL,
S/O.GYARSILAL, 1707, RISALAMANDI,
NO. 1 AJMER, T.P.NAGAR, CHANDERIYA,
CHITTORGARH.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S):

- 1. THE INTELLIGENCE INSPECTOR,
SQUAD NO.IV, COMMERCIAL TAXES,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM, CAMP AT
COMMERCIAL TAX CHECK POST, WALAYAR - 678 624.**
- 2. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST, WALAYAR - 678 624.**
- 3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAX CHECK POST, WALAYAR - 678 624.**
- 4. THE GOVERNMENT OF KERALA, REPRESENTED BY
COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 001.**

BY GOVERNMENT PLEADER SMT.LILLYK.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-12-2015 ALONG WITH WPC.38240/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE REGISTRATION CERTIFICATE.
- EXT. P2 : THE TRUE COPY OF THE NATIONAL PERMIT FOR PUBLIC CARRIER
 BEARING NUMBER 8301/09 2015 VALID UP TO 10.2.2020.
- EXT. P3 : THE TRUE COPY OF THE INVOICE NUMBER 399 DATED 24.10.2015.
- EXT. P4 : TRUE COPY OF THE SEARCH RESULT IN INTERNET.
- EXT. P5 : A TRUE COPY OF THE E-DECLARATION.
- EXT. P6 : THE TRUE COPY OF THE NOTICE BEARING NO.521/15-16
 DATED 5.11.2015 UNDER SECTION 47(2) OF THE KERALA VALUE
 ADDED TAX ACT DEMANDING SECURITY DEPOSIT OF RS.10,35,010/-

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.38226 of 2015
&
W.P.(C).No.38240 of 2015
.....
Dated this the 16th day of December, 2015

J U D G M E N T

As both these writ petitions cover the same detention they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No.38240 of 2015.

2. A consignment of car parking system in dismantled condition that was being transported at the instance of the petitioner in W.P.(C).No.38240 of 2015 was detained by the respondent. Ext.P7 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 for the petitioners and also the learned Government Pleader for the respondents.

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&
W.P.(C).No.38240 of 2015**

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 Ext.P7 detention notice, it is seen that the objection of the respondents is essentially that the item that was being transported was seen to be a car parking system in dismantled condition and the respondents suspected that the consigner and consignee had colluded to conceal an interstate works contract and thereby attempt to evade tax that was due to the state exchequer. It is also stated that the consignee did not produce any documents to substantiate the claim for own use that was declared as per Form 8F. Counsel for the petitioner in W.P.(C).No.38240 of 2015 would submit that there was a Form 16 certificate issued to cover the transaction. It is also pointed out that the petitioner who is the consignee is a registered dealer in the State. The petitioner in W.P.(C).No.38226 of 2015 is the owner of the vehicle that was transporting the goods in question.

(ii) Taking note of the submission of counsel for the petitioners in both the writ petitions and finding that the transportation of the goods was accompanied by documents as contemplated under the Kerala Value Added Tax Act, and further, that the petitioner

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in W.P.(C).No.38240 of 2015 is a registered dealer, I direct the Intelligence Inspector, Squad No.IV, Edappally, Kochi to release the goods and the vehicle to the petitioner, on the petitioner in W.P.(C). No.38240 of 2015 furnishing a simple bond without surety for the security deposit amount demanded in Ext.P7 detention notice before the said Intelligence Officer.

(iii) 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.

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

**A.K.JAYASANKARAN NAMBIAR
JUDGE**