

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 38273 of 2015 (H)

PETITIONER(S):

**M/S. SUNSHINE PAINTS,
35/2632, A & A1, ALUNGAPARAMBIL,
KARANAKODAM, SOUTH JANATHA ROAD,
THAMMANAM P.O., ERNAKULAM, KOCHI-32,
REPRESENTED BY ITS DEPOT MANAGER,
K.PADMANABHAN.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S):

- 1. THE ASST. COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES, SPECIAL CIRCLE - II,
ERNAKULAM, KOCHI - 682 013.**
- 2. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
NEW MAHE - 673 310.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: COPY OF RETURN FOR THE MONTH OF NOVEMBER 2015 OF THE PETITIONER.

EXT.P2: COPY OF INVOICE NO.0018947 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(a): COPY OF INVOICE NO.0018948 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(b): COPY OF INVOICE NO.0018949 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(c): COPY OF INVOICE NO.0018950 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(d): COPY OF INVOICE NO.0018951 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(e): COPY OF INVOICE NO.0018952 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(f): COPY OF INVOICE NO.0018953 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(g): COPY OF INVOICE NO.0018954 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P2(h): COPY OF INVOICE NO.0018955 ISSUED BY THE PETITIONER'S HEAD OFFICE.

EXT.P3: COPY OF DECLARATION GENERATED BY THE PETITIONER.

EXT.P4: COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE TRANSPORTER.

EXT.P5: COPY OF NOTICE IN FORM NO.17A ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF E-MAIL ISSUED BY THE TRANSPORTER TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 38273 of 2015

Dated this the 17th day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P5 notice issued to him detaining a consignment of paints 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.P5 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the goods were not declared at any of the border check posts and further the 8F declaration covered other consignments but not the instant consignment. The respondents therefore suspected an evasion of tax. Counsel for the petitioner would submit that, although it is a fact

that the goods were not declared in the border check post and the discrepancy noted in the 8F declaration is also correct, the fact that the goods were being stock transferred, was indicated in a declaration that was uploaded by the petitioner in the website of the Gujarat Tax Department, and therefore, there was no intention to evade payment of tax inasmuch as the transaction itself was not a taxable transaction. Noting the said submission of counsel for the petitioner, but finding that the goods were not declared before any of the border check posts, the detention on the part of the respondents cannot be said to be unjustified. I find, however, that the petitioner is a registered dealer and therefore direct the 2nd respondent to release the goods covered by the detention notice, to the petitioner, on the petitioner paying 30% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without sureties for the balance security deposit amount demanded therein, 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.

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(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

das /17.12.15