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. 38276 of 2015 (H)

PETITIONER(S) :
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1. SHIJO JOY, AGED 33 YEARS,
   KUDAPPAMKUNNEL HOUSE, ARIKUZHA P.O.,
   THODUPUZHA- 685 584, IDUKKI DISTRICT.

2. SHAJI C.D., AGED 46 YEARS,
   PUTHENVEETIL HOUSE, ETTUMANOOR P.O.,
   ETTUMANOOR- 686 631, KOTTAYAM DISTRICT.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :
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1. INTELLIGENCE INSPECTOR,
   COMMERCIAL TAXES, SQUAD NO.1, ALAPPUZHA- 688 001.

2. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

   BY GOVERNMENT PLEADER SMT.LILLY.K.T

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

Msd.

WP(C).No. 38276 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF SALE DEED DATED 14.02.2014, ENTERED INTO BETWEEN PETITIONER AND 2ND SELLER OF 2010 MODEL VOLVO EXCAVATOR FOR THE TRANSFER OF OWNERSHIP OF THE EQUIPMENT.

EXT.P1(A): TRUE COPY OF INVOICE NO.1 DATED 14.02.2014 ISSUED TO PETITIONER BY M/S.PAN PACIFIC ENGINEERING (P) LTD., COCHIN-24 FOR THE SALE OF 2010 MODEL VOLVO EXCAVATOR, AGAINST 14.50% VALUE ADDED TAX.

EXT.P1(B): TRUE COPY OF ORIGINAL PURCHASE INVOICE NO.VCE/BLR/0082/2010-11 DATED 31.05.2010, HANDED OVER TO PETITIONER ALONG WITH EXT.P1(A), BY M/S.PAN PACIFIC ENGINEERING (P)LTD., COCHIN-24.

EXT.P1(C): TRUE COPY OF INSURANCE POLICE CERTIFICATE DATED 29.05.2013 FOR 2010 MODEL VOLVO EXCAVATOR, HAVING SERIAL NO.15421/EN VOLVO EC 2010, PROVIDED TO PETITIONER ALONG WITH EXT.P1.

EXT.P2: TRUE COPY OF RELEVANT PAGE OF INSURANCE POLICY CERTIFICATE DATED 14.02.2014 FOR 2010 MODEL VOLVO EXCAVATOR, AFTER ENDORSING IN THE NAME OF PETITIONER, FOR TRANSFER OF NAME IN EXT.P1(C).

EXT.P3: TRUE COPY OF DIVING LICENSE NO.5/2019/1993 DATED 12.03.2013 ISSUED TO 2ND PETITIONER BY ASST.LICENSING AUTHORITY, KOTTAYAM.

EXT.P4: TRUE COPY OF NOTICE NO.OR.446/15-16 DATED 12.12.2015, ISSUED TO 2ND PETITIONER BY 1ST RESPONDENT, DEMANDING SECURITY DEPOSIT U/S.47(2), AFTER ESTIMATING VALUE TO THE OLD AND USED EXCAVATOR.

EXT.P5: TRUE COPY OF REPLY DATED 12.12.2015 SUBMITTED BY 1ST PETITIONER, BEFORE 1ST RESPONDENT AGAINST EXT.P4 NOTICE.

EXT.P5(A): TRUE COPY OF ORDER OF ADDL. VALUE ADDED TAX APPELLATE TRIBUNAL IN TA(VAT)NO.257/2014 DATED 12.02.2015, IN DECIDING A SIMILAR SET OF FACT IN HIRING OF EQUIPMENT.

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.38276 of 2015

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Dated this the 17th day of December, 2015

J U D G M E N T

An excavator that was being transported at the instance of the petitioners was detained by the respondents. Ext.P4 is the detention notice. In the writ petition, the petitioners are aggrieved by the insistence of the respondents that the petitioners 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.

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.P4 detention notice, it is seen that the objection of the respondents is essentially that the goods under transport were not

accompanied by any documents prescribed under Section 46 (3) of the Kerala Value Added Tax Act. Counsel for the petitioners would submit that the excavator belongs to the 1st petitioner and the document establishing ownership of the excavator was available with the 2nd petitioner, who is the driver of the vehicle that was used for transportation of the excavator. The original of the said document is also produced by counsel for the petitioners before this Court. I find that this is a case where the excavator was being transported within the State after having completed a work in Edathua. The excavator was being transported to Muvattupuzha via Cherthala. It is during this leg of transportation that the goods were apprehended and detained. I find force in the submission of counsel for the petitioners that the said leg of transportation could not have been accompanied by any of the documents stipulated in Section 46(3) of the Kerala Value Added Tax Act other than an invoice that showed that the excavator as belonging to the 1st petitioner. Under the said circumstances, I am of the view that the excavator, as also the vehicle in which it was transported, should be released to the 1st petitioner on his furnishing a simple bond without surety for the security deposit amount demanded in Ext.P4. The respondents shall at the time of release of the excavator to the 1st petitioner note the serial number of the excavator for future reference.

(ii) The respondents shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioners, within two months from the date of receipt of a copy of this judgment.

(iii) The petitioners shall produce a copy of this judgment and a copy of the writ petition before the respondents.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/17.12.15