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. 38411 of 2015 (B)

PETITIONER(S):

M/S. LAUNMARK INDIA PVT. LTD,
8/12M CRISTAL PLAZA, ULAVAIPPU P.O.,
CHERTHALA, ALAPPUZHA, REPRESENTED BY
ITS MANAGING DIRECTOR MR.JOBY K.M.

BY ADVS.SMT.S.K.DEVI,
SRI.SANTHOSH P.ABRAHAM.

RESPONDENT(S):

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1. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST,
   WALAYAR.

2. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAX CHECK POST,
   WALAYAR.

3. THE COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES,
   KUTHIATHODU, ALAPPUZHA DISTRICT.

BY GOVT. 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:

rs.

WP(C).No. 38411 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER UNDER KVAT ACT.
EXT.P2	COPY OF THE RETURN FOR THE MONTH OF OCTOBER 2015.
EXT.P3	COPY OF THE INVOICE NO.374 DATED 11/12/2015.
EXT.P4	COPY OF THE 'E' TOKEN NO.32041860254/2015-16/1407261 DATED 12/12/2015.
EXT.P5	COPY OF THE DETENTION NOTICE NO.OR.927/1/15-16 DATED 12/12/2015.
EXT.P6	COPY OF THE INVOICE NO.LM/28 DATED 18/10/2015.
EXT.P7	COPY OF THE REQUEST DATED 12/12/2015 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 1 AND 2.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 38411 of 2015
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Dated this the 17th day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P5 notice issued to him detaining a consignment of Iron Box Sets and Ironing Table 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 classification of the goods for the purpose of tax. It is stated that the petitioner had declared the item as Iron and Steel product attracting tax at 5%,

whereas on verification, it was found to be iron box and ironing table which would attract tax @ 14.5% Counsel for the petitioner would submit that the description in the declaration was a mistake and the petitioner actually pays tax in respect of the products at the time of sale within the State @ 14.5%. He produces Ext.P6 invoice to substantiate the said contention. It is also pointed out that the petitioner is a registered dealer in the State. Taking note of the said submission of counsel for the petitioner, and finding that the transportation of the goods was duly covered by valid documents as prescribed under the KVAT Act, I direct the 1st respondent to release the goods in the vehicle 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /17.12.15