IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 38503 of 2015 (K)

PETITIONER :

M/S. GANNON INTERNATIONAL
DD VYAPARA BHAVAN, K.P. VALLON ROAD
KADAVANTHARA, 28, KADAVANTHARA
ERNAKULAM – 682 020
REPRESENTED BY ITS PROPRIETOR
SRI. GANESH DATT PATHAK.

BY ADVS.SRI.RAJESH NAMBIAR
SRI.N.R.SAJ

RESPONDENT :

COMMERCIAL TAX INSPECTOR
COMMERCIALTAX CHECKPOST
AMARAVILA, PIN – 695 004.

BY GOVT. PLEADER SRI. R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 38503 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE NOTICE DATED 14.12.2015.

EXT.P2 COPY OF THE INVOICE NUMBER 1510505 DATED 12/12/2015.

EXT.P3 COPY OF THE FORM 8F DECLARATION DATED 12.12.15.

EXT.P4 COPY OF THE REVISED FORM 8F.

EXT.P5 COPY OF THE CERTIFICATE OF REGISTRATION.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.38503 of 2015

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Dated this the 18th day of December, 2015

J U D G M E N T

A consignment of wood wool that was being transported at the instance of the petitioner was detained by the respondent. Ext.P1 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 petitioner and also the learned Government Pleader for the respondent.

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.P1 detention notice, it is seen that the objection of the respondent is essentially with regard to the classification of the item that was

transported by the petitioner. While the petitioner had declared the goods in the 8F declaration as iron and steel product and the invoice showed the item as made of wood, the respondent on physical verification found the items to be acoustic panels which were taxable at 14.5%. It was also found that the place of business of the petitioner was at Ernakulam where as the delivery address of the goods was shown to a premises in Trivandrum. It is clarified that the item is wood wool that is used for acoustic enclosures and the petitioner incorporates these items in the works contract which it executes in a theatre complex in Trivandrum. It is stated that the transaction being an interstate sale would have no impact of the tax liability in Kerala and the transportation was duly accompanied by documents contemplated under the Kerala Value Added Tax Act.

(ii) Taking note of the said submission of counsel for the petitioner, I direct the respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P1.

(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

mns/18.12.15