

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. 38634 of 2015 (D)

PETITIONER :

**M/S. SPANISO STUDIO, DOOR NO. K.P. 18/243A, CI,
TOSCANA TOWER, NEAR HARA HARA TEMPLE,
KARANTHUR P.O., KOZHIKODE REPRESENTED
BY IT'S MANAGING PARTNER SMT. NISHA K., AGED 38 YEARS**

**BY ADVS.SMT.K.LATHA
SMT.M.K.HAJARA
SRI.C.RAMACHANDRAN**

RESPONDENTS :

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POT, AMARAVILA - 695122.**

R1 & R2 BY GOVERNMENT 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:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE BILL OF ENTRY FR HOME CONSUMPTION, COMMERCIAL INVOICE NO. JST 20150980A AND WIGHT AND ANALYSIS CERTIFICATE NO. JST20150980C BOTH DT 13TH NOVEMBER 2015 ISSUED BY JOYSON CERAMICS MATHERIALS CO.LTD CHINA TO THE PETITIONER.
- P2: COPY OF THE FORM 8F DECLARATIONS DT 15TH DECEMBER 2015 AT 4.35 PM ISSUED BY THE PETITIONER.
- P3: COPY OF THE FORM K.K. NO. C 11536 ISSUED IN THE NAME F THE PETITIONER DT 15/12/2015.
- P4: COPY OF DETENTION NOTICE OR NO. 931/2015-16 DT 16/12/2015 ISSUED BY THE R2 U/S 47(2) OF THE KVAT ACT TO THE PETITIONER.
- P5: COPY OF THE REPLY DT 16TH DECEMBER 2015 FILED BY THE PETITIONER BEFORE THE R2.

RESPONDENT'S EXHIBITS : **NIL.**

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.38634 of 2015
.....
Dated this the 18th day of December, 2015

J U D G M E N T

A consignment of vitrified tiles that was being transported at the instance of the petitioner was detained by the respondents. Ext.P4 is the detention notice. In the writ petition, the petitioner is aggrieved by the insistence of the respondents 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 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 with regard to the value of the consignment that was declared by the petitioner. While the

petitioner had declared the value as Rs.4,89,821/- based on the cost of import together with the charges that have to be added such as the landing charges and the customs duty etc, the respondents were of the view that the value would have to be enhanced to Rs.6,44,579/- by adding certain other charges. Counsel for the petitioner would submit that the petitioner has duly paid the advance tax on the declared value of Rs.4,89,821/- and the demand for advance tax in respect of the differential value cannot be legally sustained since the charges demanded are contrary to the circular issued by the department itself. There is no dispute with regard to the documents that accompanied the transportation of the goods, and further, the petitioner is a registered dealer in the State.

(ii) Taking note of the said submission of counsel for the petitioner, I direct the 2nd 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.P4.

(iii) 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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(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/18.12.15