

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 39094 of 2015 (J)

PETITIONER :

**ASMA ASHRAF
W/O. ASHRAF V.M., AGED 40 YEARS
PROPRIETRESS, CHANDRIKA WOOD INDUSTRIES
P.P. ROAD, KANDANTHARA
ALLAPPRA P.O., PARUMBAVOOR – 683 553.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT :

**COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST
WALAYAR – 678 624.**

BY GOVT. PLEADER SMT. K.T. LILLY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER UNDER KERALA VALUE ADDED TAX RULES, 2005.
- EXT.P2 COPY OF THE NOTICE DATED 16.12.2015 BEARING OR NO. 393/15-16 ISSUED BY THE RESPONDENT.
- EXT.P3 COPY OF THE INVOICE NO. 96 DATED 15.12.2015 ISSUED BY THE PETITIONER TO KRISHNA PLYWOODS, KARUR.
- EXT.P3(a) COPY OF THE INVOICE NO. 97 DATED 15.12.2015 ISSUED BY THE PETITIONER TO KRISHNA PLYWOODS, KARUR.
- EXT.P4 COPY OF THE DELIVERY NOTE BEARING NO. DN/34265/2015 DATED 15.12.2015.
- EXT.P4(a) COPY OF THE DELIVERY NOTE BEARING NO. DN/34275/2015 DATED 15.12.2015.
- EXT.P5 COPY OF THE ADVANCE TAX RECEIPT IN FORM 8F BEARING NO. 1451786 DATED 15.12.2015.
- EXT.P5(a) COPY OF THE ADVANCE TAX RECEIPT IN FORM 8F BEARING NO. 1452032 DATED 15.12.2015.
- EXT.P6 COPY OF THE LETTER DATED 15.12.2015 SUBMITTED BY THE PETITIONER BEFORE THE CHECK POST OFFICER (SALES TAX), WALAYAR.
- EXT.P6(a) COPY OF THE LETTER DATED 15.12.2015 ISSUED BY THE PETITIONER FOR SUBMITTING BEFORE THE CHECK POST OFFICER (SALES TAX), CHECK POST, CHAVADY, TAMIL NADU.

(Contd...)

WP(C).No. 39094 of 2015 (J)

EXT.P7 COPY OF THE INVOICE NO. 97 DATED 15.12.2015 ISSUED BY THE PETITIONER TO KRISHNA PLYWOODS, KARUR (EXT-P3(a)) AFFIXED WITH OUT PASS SEAL FROM THE CHECK POST.

EXT.P7(a) COPY OF THE DELIVERY NOTE BEARING NO. DN/34275/2015 DATED 15.12.2015 (EXT-P4(a)) AFFIXED WITHOUT PASS SEAL FROM THE CHECK POST.

EXT.P7(b) COPY OF THE ADVANCE TAX RECEIPT BEARING DATED 15.12.2015 (EXT-P5(a)) AFFIXED WITHOUT PASS SEAL FROM THE CHECK POST.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 39094 of 2015

Dated this the 22nd day of December, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P2 notice issued to him detaining a consignment of Plywood 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.P2 notice, it is seen that the objection of the respondent is essentially with regard to the mismatch in the quantity that was declared to be transported in the vehicle. Counsel for the petitioner would submit that there were two consignments which were consigned to the same consignee and the two consignments were loaded in separate Trucks simultaneously and was carried to

the destination through the said Trucks. It is submitted that, on account of the problem created by the head-load workers at the time of loading, the goods that were intended for Truck No.1 was loaded in Truck No.2 and vice versa. It is under these circumstances that the documents, that accompanied the goods, indicated the consignment in Truck No.1 as carried in Truck No..2 and vice versa. It is pointed out that the other Truck had passed through the Check-post without detention and it is only one of the Trucks that was detained by Ext.P2 notice. Counsel for the petitioner relies on the invoices and the declaration that are produced along with the writ petition to substantiate his contention. Taking note of the said submission of counsel for the petitioner and the documents relied on in the writ petition, I direct the 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 respondent.

(ii) 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.

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

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /22.12.15