

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 28TH DAY OF APRIL 2017/8TH VAISAKHA, 1939

WP(C).No. 14667 of 2017 (G)

PETITIONER:

M/S JWALA DIAMONDS & JEWELLERS
X/974-30, 2ND FLOOR, BHEEMA BUILDING,
SOUTH BAZAR, THRISSUR-680 001,
REPRESENTED BY ITS MANAGING PARTNER
SRI.K.V.JOHNLY.

BY ADVS.SRI.TOMSON T.EMMANUEL
SMT.C.A.RAMEENA

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.
2. INTELLIGENCE INSPECTOR
SQUAD NO.III, COMMERCIAL TAXES,
KOLLAM AT KARUNAGAPPALLY-690 618.
3. COMMERCIAL TAX OFFICER
COMMERCIAL TAXES, 1ST CIRCLE,
POOTHOLE, THRISSUR-680 004.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-04-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 COPY OF REGISTRATION CERTIFICATE UNDER THE KVAT ACT
ISSUED TO PETITIONER FIRM BY 3RD RESPONDENT.

EXHIBIT P2 COPY OF ONLINE SALESMAN PERMIT NO.32080552121/2016-
17/2 DATED 28.04.2016 IN FORM NO.1C ISSUED TO THE PETITIONER BY 3RD
RESPONDENT

EXHIBIT P2(A) COPY OF AUTHORIZATION DATED 20.04.2017 ISSUED BY
PETITIONER FIRM TO SALESMAN IN ACCORDANCE WITH SEC.19(1) TO THE KVAT
ACT UNDER HIS SPECIMEN SIGNATURE

EXHIBIT P2(B) COPY OF PERMIT ISSUE VOUCHER NO.8 DATED 20.04.2017
RAISED BY THE PETITIONER FIRM WHILE ENTERING 1473.660 GRAMS OF
STUDDERED GOLD/ DIAMOND JEWELLERY INTO STOCK REGISTER OF EXT.P2
SALESMAN PERMIT

EXHIBIT P2(C) COPY OF STOCK REGISTER TO EXT P2 SALESMAN PERMIT FOR
HAVING STOCK OF 1473.660 GRAMS OF STUDDERED GOLD/DIAMOND JEWELLERY

EXHIBIT P3 COPY OF DELIVERY NOTE NO.320805/DN/556/2017 DATED
20.04.2017 RAISED FOR CARRYING 1473.660 GRAMS OF STUDDERED GOLD/DIAMOND
JEWELLERY FROM THRISSUR TO KARUNAGAPPILLY

EXHIBIT P4 COPY OF TAX INVOICE NO.389 DATED 21.04.2017 ISSUED
THROUGH THE SALES MAN FOR 100 GRAMS OF BULLION.

EXHIBIT P4(A) COPY OF CHEQUE NO.202591 DATED 21.04.2017 ISSUED BY
PETITIONER FIRM AGAINST EXT.P4 TAX INVOICE

EXHIBIT P5 COPY OF DELIVERY NOTE NO.320805/DN/574/2017 DATED
21.04.2017 GENERATED AT 03.48 PM RISE FOR CARRYING 1473.660 GRAMS OF
STUDDERED GOLD/DIAMOND JEWELLERY FROM KARUNAGAPPILLY TO THRISSUR

EXHIBIT P6 COPY OF NOTICE NO. OR 45/2017-18 DATED 21.04.2017 IN
FORM NO.17A U/S.47(2) TO KVAT ACT ISSUED BY THE 2ND RESPONDENT IN
DETAINING GOLD ORNAMENTS AND BULLION CARRIED WITH BY SALES MAN
DEMANDING SECURITY DEPOSIT, ISSUED WITHOUT PROPER REASONING

EXHIBIT P7 COPY OF REPLY DATED 22.04.2017 AGAINST EXT.P6 NOTICE,
SENT TO 2ND RESPONDENT BY E-MAIL AND HAND COPY SENT BY COURIER.

EXHIBIT P8 TRUE COPY OF E-MAIL FORWARDED TO PETITIONER BY
INTELLIGENCE OFFICER, SQUAD NO.III KOLLAM AT KARUNAGAPPILLY, WHO IS
THE SUPERIOR OFFICER TO 2ND RESPONDENT, AGAINST EXT.P7 REPLY
SUBMITTED BY PETITIONER.

EXHIBIT P9 TRUE COPY OF LETTER DATED 26.04.2017 FORWARDED BY
PETITIONER BY E-MAIL AGAINST EXT.P7 COMMUNICATION TO INTELLIGENCE
OFFICER, SQUAD NO.III, KARUNAGAPPILLY, MARKING COPY TO 2ND
RESPONDENT.

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RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

SHAJI P.CHALY, J.

W.P.(C) No. 14667 of 2017

Dated this the 28th day of April, 2017

J U D G M E N T

The petitioner is a partnership firm, engaged in the manufacturing and sales of studded gold ornaments and conducting business in the name and style 'Jwala Diamonds & Jewellers', at South Bazar, Thrissur. The petitioner was issued with Ext.P6 notice apparently under Section 47(2) of the KVAT Act. The petitioner has submitted objection to the same evident from Ext.P7. According to the petitioner, Ext.P6 notice issued is not in accordance with law and therefore, the entire action initiated by the respondents suffers from the vice of arbitrariness and interference of this Court at this stage of the proceedings is required under Article 226 of the Constitution of India. It is thus seeking appropriate directions, this writ petition is filed.

2. Heard the learned counsel for the petitioner and the learned senior Government Pleader. Anyhow, even

if the petitioner has a case that the subject issue under Ext.P6 is without jurisdiction by the statutory authority, the same is a subject matter which can be considered by the said authority itself having raised by the petitioner in Ext.P7 objection. Therefore, there will be a direction to attain finality to Ext.P6 proceedings initiated, within two months from the date of receipt of a copy of this judgment. In the meanwhile, the goods detained as per Ext.P6 shall be released to the petitioner on the petitioner executing a bank guarantee for 50% of the demand contained in Ext.P6 and executes a simple bond for the balance 50%.

The writ petition is disposed of accordingly.

sd/-
SHAJI P.CHALY
JUDGE

ds 28.04.2017