

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WA.No. 567 of 2015 () IN RP.24/2015

AGAINST THE ORDER IN RP 24/2015 IN W.P.(C) NO.15550/2014
DATED 15/1/2015 AND AS AGAINST THE JUDGMENT IN W.P.(C)
NO.15550/2014 DATED 20/6/2014 ON THE FILE OF THE HIGH
COURT OF KERALA.

APPELLANT(S)/PETITIONER:

M/S. MULTIMAX ENGINEERING WORKS PVT. LTD.,
A-6, INDUSTRIAL ESTATE,
PARTAPUR, MEERUT,
UTTAR PRADESH, 250 103 REPRESENTED BY ITS
ACCOUNT EXECUTIVE SHASHIKANT.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/RESPONDENTS:

1. THE INTELLIGENCE INSPECTOR, SQUAD NO.1,
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE-670 106.
2. THE INTELLIGENCE OFFICER, SQUAD NO.1,
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE-670 106.
3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAX CHECK POST, WALAYAR-678 624.
4. M/S BHARAT PETROLEUM CORPORATION LIMITED,
POST BAG NO.2, AMBALAMUGAL,
ERNAKULAM DISTRICT-682 302.

R1-R3 BY GOVERNMENT PLEADER SRI. LIJU V. STEPHEN
R4 BY SRI.M. GOPIKRISHNAN NAMBIAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

W.A.No.567 of 2015

Dated this the 13th day of March, 2015

ORDER

Thottathil B. Radhakrishnan, J.

C.M.Appl. No.314 of 2015:

All parties have appeared. Perused affidavit. Heard.
We are satisfied that sufficient cause has been shown to
condone the delay. Hence delay is condoned.

W.A.No.567 of 2015:

The learned Government Pleader appears for
respondents 1 to 3. Advocate Sri. M. Gopikrishnan Nambiar
appears for the 4th respondent. Service complete.

Heard finally on consent of parties.

JUDGMENT

The appellant is the writ petitioner. That establishment
faced detention of goods and demand for security for
release of those goods. It came to this Court and invoked

the writ jurisdiction contending that the goods were exclusively for the purpose of Bharat Petroleum Corporation Limited ('BPCL', for short) which is the 4th respondent. The BPCL was also party to the writ petition. It did not disown the transaction. The learned single Judge directed the release of the goods on execution of simple bond without sureties. But, such bond had to be executed by the petitioner and the BPCL. The fact of the matter remains that BPCL, in its commercial wisdom, retained amount which it feels would be required to satisfy any claim that it would have against the petitioner on the basis of the bond executed by it for the purpose of the transaction. What really pinches the writ petitioner is the direction in the impugned judgment that the adjudication proceedings will commence only after the machinery is installed in the premises of the BPCL. According to the learned counsel for the BPCL, it is undertaking a massive expansion programme and the machinery that brought in is required for that purpose. Therefore, it would not be in the fitness of things to insist that the installation would happen within a particular time that could be assessed, to make it a pre-condition for the adjudication proceeding, qua, the

supplier. Not only that, if the ultimate interest is to ensure that the supplier does not abuse or misuse the goods brought in under the cover of the transit as meant for BPCL, there could be other modes of protecting the interest of the revenue without hurting the commercial interest of the petitioner and the BPCL. This can be done, logically, by ordering that the adjudication proceedings need not wait for the installation of the machinery in the premises of the BPCL; however that, if the BPCL does not ultimately use the machinery for the installation and returns it to the petitioner, that has to be brought to the notice of the 3rd respondent, the Inspecting Assistant Commissioner, Commercial Tax Check Post, Walayar.

In the result, this appeal is allowed modifying the impugned judgment and R.P. order and directing that the adjudication proceedings in terms of the directions contained in the judgment of the learned single Judge will be carried out without waiting for completion of the installation proceedings of the machinery in the BPCL's premises. If the BPCL does not ultimately utilise the machinery covered by the transaction in question and returns the machinery to the petitioner, that shall be done

by the BPCL only with prior notice to the Inspecting Assistant Commissioner, Commercial Tax Check Post, Walayar. It is so ordered and the BPCL shall stand bound by the direction issued hereby in that regard.

This Writ Appeal is ordered accordingly.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge