

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 4193 of 2015 (Y)

PETITIONERS :

- 1. ESSAR STEEL INDIA LTD.,PLOT NO.A-6,
SIPCOT ORAGADAM, KANCHIPURAM DISTRICT-602 112,
TAMILNADU, REPRESENTED BY S.K.AGARWAL,
AGED 50 YEARS, S/O.PARAMANANDASAGAR.**
- 2. ESSAR PROJECT INDIA LTD.,
KOSSERIL HOUSE, EDAPPALLY SOUTH VILLAGE,
33/316, B, AMBEDKAR ROAD, VENNALA, KOCHI-682 018,
REPRESENTED BY G. BHANUNATH, AGED 50 YEARS, S/O.GANESH,
OPERATIONS MANAGER.**

BY ADV. SRI.S.MURALI

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695 001**
- 2. COMMERCIAL TAX INSPECTOR, WALAYAR CHECK POST,
WALAYAR, PALAKKAD DISTRICT-678 001**
- 3. COMMERCIAL TAX OFFICER,
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM, KOCHI-682 018**
- 4. COMMERCIAL TAX OFFICER, KANCHIPURAM DISTRICT,
TAMILNADU-602 112**
- 5. BHARATH PETROLEUM CORPORATION LTD.,
KOCHI REFINERY, AMBALAMUKAL,
ERNAKULAM DISTRICT-682 302.**

**R1 TO R4 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN
R5 BY ADV. SRI.K.I.MAYANKUTTY MATHER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE EXCISE INVOICE CUM RETAIL INVOICE CUM RETAIL INVOICE NO.2051-2051000072 DATED 23/01/2015 BY M/S. ESSAR STEEL INDIA LTD.
- P2 COPY OF THE E-CONSIGNMENT DECLARATION ON FORM NO.8F DATED 26/01/2015 ISSUED BY KERALA COMMERCIAL TAXES DEPARTMENT FOR TRAILER LORRY NO.TN-21-AF-3373.
- P3 COPY OF THE NOTICE ISSUED BY 2ND RESPONDENT UNDER SECTION 47(2) OF KVAT ACT DATED 26/01/2015
- P4 COPY OF THE EXPLANATION/REPLY SUBMITTED TO EXT.P3 NOTICE ISSUED BY THE 2ND RESPONDENT ON BEHALF OF 1ST PETITIONER DATED 31/01/2015.
- P5 COPY OF THE EXPLANATION/REPLY SUBMITTED TO EXT.P3 NOTICE ISSUED BY THE 2ND RESPONDENT ON BEHALF OF THE 2ND PETITIONER.
- P6 COPY OF THE CERTIFICATE OF REGISTRATION UNDER KVAT RULES TIN NO.32072049404 C DATED 25/07/2007 WITH RENEWALS IN FAVOUR OF 2ND PETITIONER.
- P7 COPY OF THE AUTHORISATION LETTER DATED 05/02/2015 ISSUED BY THE 1ST PETITIONER BY M/S. ESSAR STEEL INDIA LTD
- P8 COPY OF THE AUTHORIZATION LETTER ISSUED TO 2ND PETITIONER BY ESSAR PROJECTS INDIA LTD DATED 01/02/2015.

RESPONDENT'S EXHIBIT: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.4193 of 2015 ()

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Dated this the 10th day of February, 2015

JUDGMENT

The petitioners are aggrieved by Ext.P3 detention notice whereby a consignment of Steel Bed Plates, that was being transported from Kanchipuram to Kochi, at the instance of the second petitioner, was detained by the respondents at the check-post at Walayar. In the writ petition the petitioners are aggrieved by the insistence of the respondents that the petitioners must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.S.Murali, the learned counsel for the petitioners, Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondent Nos. 1 to 4 and Sri.K.I.Mayankutty Mather, learned Standing counsel appearing for the 5th 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.P3 detention notice, it is seen that, the objection of the respondents is essentially that, the goods were actually sold by M/s.Essar Steels (I) Ltd., to the petitioners and

were being consigned to the work site of the petitioners at BPCL, Kochi. The 8F declaration, however, indicated that the sale was to BPCL, Kochi. It was, therefore, suspected that there could be a possible evasion of tax in the event of the petitioners subsequently selling the goods to BPCL, Kochi. I note, however, that in the invoice, the sale is correctly shown as from M/s.Essar Projects (I) Ltd., to the petitioner and tax under the CST Act has also been discharged on the said sale. The 2nd petitioner is also a registered dealer within the State. Under these circumstances, I direct the 2nd respondent to release the goods and vehicle bearing registration No.TN-21-AF-3373, on condition that the petitioner furnishes a simple bond without sureties for the security deposit amount demanded in Ext.P3 detention notice before the 2nd respondent.

(ii) The respondents 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 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE