

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No.6974 of 2015 (V)

PETITIONERS:

1. **COMPOSITE TECHNOLOGIES PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR AND CEO,
PLOT NO.4,HIREHALLI INDUSTRIAL AREA,
TUMKUR (FORMERLYFROM NO.A-151 IIND C MAIN ROAD,
IIND STAGE,PEENYAINDUSTRIAL AREA,PEENYA,
SSI,BANGALORE URBAN),KARNATAKA STATE,
INDIA,PIN - 572 168.**
2. **K.KISHORE BABU,AGED 64 YEARS,
S/O.LATE K.V.SUBBAIAH,MANAGING DIRECTOR,
COMPOSITE TECHNOLOGIES PVT.LTD.,PLOT NO.4,
HIREHALLI INDUSTRIAL AREA,TUMKUR
(FORMERLYFROM NO.A-151 IIND C MAIN ROAD,
IIND STAGE,PEENYA INDUSTRIAL AREA,
PEENYA,SSI,BANGALOREURBAN),KARNATAKA STATE,
INDIA,PIN - 572 168.**

BY ADV. SRI.MANJU ANTONEY

RESPONDENTS:

1. **STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,PIN - 695 001.**
2. **COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,VAZHIKADAVU,
MALAPPURAM DISTRICT.PIN - 679 333.**
3. **UNION OF INDIA,REPRESENTED BY CHIEF SECRETARY,
UNION SECRETARIATE,NEW DELHI,PIN - 600 001.**

**R1 & R2 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.
R3 BY SRI.N.NAGARESH,ASSISTANT SOLICITOR GENERAL OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No.6974 of 2015 (V)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P-1:TRUE COPY OF ORDER DATED 12.11.14 ISSUED BY MR.GREGORIOS
RENEWAL CENTRE TO THE 1ST PETITIONER.**

**EXT.P-2:TRUE COPY OF INVOICE NO.004 DATED 27.2.15 ISSUED BY THE
PETITIONERS.**

**EXT.P-3:TRUE COPY OF REGISTRATION CERTIFICATE DATED 11.6.2003 OF
VEHICLE NO.KL-05-P-1194.**

**EXT.P-4:TRUE COPY OF THE CENTRAL EXCISE REGISTRATION CERTIFICATE
DATED 20.1.2005 OF 1ST PETITIONER.**

**EXT.P-5:TRUE COPY OF NOTICE UNDER SECTION 47(2) OF THE KERALA VALUE
ADDED TAX,2003 DATED 28.2.2015 ISSUED BY THE 2ND RESPONDENT
TO THE PETITIONERS.**

**EXT.P-6:TRUE COPY OF REPLY DATED 3.3.15 FILED BY THE PETITIONERS TO
EXHIBIT P5 - NOTICE TO THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.6974 of 2015

.....
Dated this the 6th day of March, 2015

JUDGMENT

The petitioners, are aggrieved by Ext.P5 detention notice issued to him, detaining a consignment of castellated beam, tresses etc., that was being transported at their instance . 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.Manju Antoney, the learned counsel for the petitioners and Smt.Sobha Annamma Eappen, 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.P5 notice, it is seen that the objection of the respondents is essentially that the petitioners had undertaken the work of design, fabrication and installation of the entrance porch of an auditorium at Thiruvananthapuram, and the

work was in the nature of a works contract. The petitioners, however, did not have a registration as a dealer engaged in works contract in the State of Kerala. Under these circumstances, the possibility of evasion of tax was suspected. Counsel for the petitioners would submit that, although the petitioner was not a registered dealer in the State, he was doing only the supply of fabricated materials in Kerala, since the design and fabrication was done in Karnataka.

(ii) In view of the fact that, the dispute is factual and, it is not in dispute that the petitioners are not registered dealers in the State, I am of the view that the goods and the vehicle, detained by the respondents, can be released to the petitioners only on terms. Accordingly, I direct the 2nd respondent to release the goods and the vehicle on the petitioners paying 50% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without surety for the balance amount demanded therein, before the 2nd respondent.

(iii) The 2nd respondent shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioners, within two months from the date of receipt of a copy of this judgment.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

