

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

WP(C).No. 12736 of 2015 (N)

PETITIONER :

**JINDAL INFRASTRUCTURES PVT. LTD.,
'JUGAL JYOTI', 176, CST ROAD,
KALINA, SANTHACRUZ EAST, MUMBAI-400 098,
REPRESENTED BY ITS PROJECT MANAGER,
SRI.VIKRAMAJEET MISHRA.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. INTELLIGENCE INSPECTOR,
COMMERCIAL TAXES, SQUAD NO.1, ASRAMAM P.O.,
KOLLAM-691 002.**
- 2. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.1, ASRAMAM P.O.,
KOLLAM-691 002.**
- 3. M/S.RAY ENGINEERING LTD.,
CONTRACTOR OF BPCL-KOCHI REFINERY, 1/462A,
AMBALAMUGAL P.O., COCHIN-682 302.**
- 4. COMMERCIAL TAX OFFICER (WORKS CONTRACT),
COMMERCIAL TAXES, MATTANCHERY-682 002.**

BY SPL.GOVERNMENT PLEADER (TAXES) SRI.S.SUDHISH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : TRUE COPY OF THE REPAIR BILL NO.063 DT. 2-4-2015 ISSUED FOR REPAIRING OF KELLY BAR IN A WORK SHOP AT THIRUVANANTHAPURAM.
- P2 : TRUE COPY OF THE DECLARATION DT. 3-4-15 PREPARED BY THE PETITIONER FOR RETURN OF KELLY BAR TO MUMBAI AFTER THE HIRING OF THE EQUIPMENT BY THE 3RD RESPONDENT.
- P3 : TRUE COPY OF THE LORRY RECEIPT NO.5341 DT. 3-4-15 ISSUED TO THE PETITIONER BY THE TRANSPORTER.
- P4 : TRUE COPY OF THE ONLINE DELIVERY NOTE NO.321510/DN/153/2015 DT. 6-4-15 AMOUNTING TO RS.5,00,000/- PREPARED ON THE BASIS OF EXT.P2 DECLARATION ISSUED TO PETITIONER BY 3RD RESPONDENT FOR FACILITATING TRANSPORT OF KELLY BAR TO MUMBAI.
- P5 : TRUE COPY OF THE NOTICE NO.OR 51/15-16 DT. 7-4-2015 ISSUED BY THE 1ST RESPONDENT THROUGH THE DRIVER OF THE TRANSPORT VEHICLE, DEMANDING SECURITY DEPOSIT U/S.47(2) TO THE KVAT ACT.
- P6 : TRUE COPY OF THE REPLY DT.8-4-15 SUBMITTED BY THE PETITIONER, BEFORE THE 1ST RESPONDENT AGAINST EXT.P5 NOTICE FOR PERMITTING TRANSPORT OF KELLY BAR TO MUMBAI.
- P7 : TRUE COPY OF THE E-MAIL DT. 17-4-2015 ISSUED BY 2ND RESPONDENT WHO IS THE OFFICER CONDUCTING ENQUIRY, SUPERIOR TO 1ST RESPONDENT CONFIRMING THE DEMAND OF SECURITY DEPOSIT.
- P8 : TRUE COPY OF THE JUDGMENT DT. 10-2-15 IN WPC.NO. 4194/15(Y) OF THIS HON'BLE COURT, PASSED ON A SIMILAR SITUATION PERMITTING RETURN OF GOODS FROM KERALA.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

ANIL K. NARENDHAN, J.,

W.P.(C)No.12736 of 2015

Dated this the 24th day of April, 2015

JUDGMENT

The petitioner has approached this Court with this writ petition seeking a writ of certiorari to quash Ext.P5 notice issued by the 1st respondent and for other consequential reliefs. The petitioner, who is a hiring contractor in piling rig, has entered into an agreement with the 3rd respondent. Going by the facts disclosed in the writ petition, a trailer carrying *kelly bar* was intercepted by the 1st respondent, which resulted in the Ext.P5 notice under Section 47(2) of the KVAT Act by which the petitioner was asked to remit a sum of Rs. 8,70,000/- as security. Aggrieved by the aforesaid demand notice the petitioner is before this Court with this writ petition.

2. I heard the learned counsel for the petitioner and also the Sr.Government Pleader appearing for the official respondents.

3. The petitioner is mainly relying on Ext.P1 bill issued from a workshop at Thiruvananthapuram and also Ext.P4 delivery note dated 06.04.2015, in order to contend that there is absolutely no evasion of tax as alleged and that Ext.P5 notice and that the said notice issued under Section 47(2) of the KVAT Act, 2003 is legally unsustainable.

4. The legality or otherwise of Ext.P5 notice cannot be adjudicated at this stage in a writ proceedings under Article 226 of the Constitution of India. The petitioner has already filed Ext.P6 objection to Ext.P5 notice, to which he was issued with Ext.P7 reply by the 1st respondent, in which the 1st respondent has stated various reasons to arrive at a prima facie conclusion that there is an attempt for evasion of tax.

5. Considering the facts and circumstances of the case, this writ petition is disposed with the following directions.

The 1st respondent shall finalise the proceeding initiated against the petitioner based on Ext.P5 notice, as expeditiously as possible, at any rate, within three months from the date of receipt of a certified copy of the judgment.

In the meanwhile, the vehicle and goods shall be released to the petitioner, on the petitioner depositing a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as security and furnishing a simple bond in terms of the KVAT Act for the remaining sum .

Sd/-

ANIL K. NARENDRAN
JUDGE

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