

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No.24812 of 2015 (B)

PETITIONER(S):-

M. MUHAMED BASHEER, AGED 52 YEARS, S/O.M.A.MUHAMMAD,
PROPRIETOR, AL-FAH-ASSOCIATES,
MUTTOM, ALUVA-683 016.

BY ADV. SRI.G.KRISHNAKUMAR.

RESPONDENT(S):-

1. UNION OF INDIA,
MINISTRY OF FOREIGN TRADE & COMMERCE,
REPRESENTED BY ITS SECRETARY, NEW DELHI-110 011.
2. DIRECTOR GENERAL OF FOREIGN TRADE,
UDYOG BHAGAN , H-2ING, GATE NO.2,
MOULANA AZAD ROAD, NEW DELHI-110 011.
3. GRIEVANCE REDRESSAL COMMITTEE,
OFFICE OF THE JOINT DIRECTOR OF FOREIGN TRADE,
KENDRIYA BHAVAN, KAKKANAD, COCHIN-682030.
4. JOINT DIRECTOR OF FOREIGN TRADE,
KENDRIYA BHAVAN, KAKKANAD, COCHIN-682030.
5. DP WORLD,
ADMINISTRATIVE BUILDING, ICCT, VALLARPADAM,
SEZ, ERNAKULAM-682 082.
6. ARCLINE,
5, DUKE OF EDINBAG STREET, PORT LOUIS, MOURITIUS,
REPRESENTED BY IT'S INDIAN AGENT,
WEST SHIP LOGISTICS (P) LTD., LAKSHMI HOUSE, W/ ISLAND,
COCHIN-682 003, REPRESENTED BY IT'S MANAGING DIRECTOR.
7. MANORAMA SALES CORPORATION,
MAROTTICHODU JUNCTIION, EDAPPALLY, KOCHI-682 024.

8. ALVAND PETRO CHEMICAL COMPANY LTD.,
11, 9TH FLOOR, ZAFAR STREET,
TEHRAN, IRAN, PO BOX NO.84921-3591,
REPRESENTED BY ITS MANAGING DIRECTOR.

R1 TO R4 BY CENTRAL GOVERNMENT COUNSEL SRI.S.BIJU

R6 BY ADVS. SRI.V.M.SYAM KUMAR

SMT.KRIPA ELIZABETH MATHEWS

SMT.P.F.ROSY

R7 BY ADVS. SRI.V.M.KURIAN

SRI.MATHEW B. KURIAN

SRI.K.T.THOMAS

SRI.LITTO VARGHESE PALATHINKAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : TRUE COPY OF THE PERFORMA INVOICE DATED 1-6-2015.
- EXT.P2 : TRUE COPY OF THE REPORT DATED 15-6-2015 ISSUED BY THE
SBT, ALUVA BRANCH EVIDENCE SWIFT TRANSFER TO
8TH RESPONDENT.
- EXT.P3 : TRUE COPY OF THE DRAFT B/L ISSUED BY THE ARCLINE.
- EXT.P4 : TRUE COPY OF THE B/L ISSUED BY ARC LINE DRAWN IN
FAVOUR OF THE PETITIONER.
- EXT.P5 : TRUE COPY OF THE INVOICE DATED 21-7-2015 ISSUED BY THE
8TH RESPONDENT TO THE PETITIONER.
- EXT.P6 : TRUE COPY OF THE COMPLAINT/REPRESENTATIONN 12-8-2015
PREFERRED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P7 : TRUE COPY OF THE E-MAIL DATED 11-8-2015 ISSUED BY THE
6TH RESPONDENT'S INDIAN AGENT TO THE PETITIONER.
- EXT.P8: TRUE COPY OF THE SAID PROFORMA INVOICE DATED
31.05.2015 BEARING NO.A/CHEM-01/2015 ISSUED BY
RESPONDENT NO.8.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.24812 of 2015-B

Dated this the 20th day of August, 2015

JUDGMENT

The petitioner is aggrieved with the fact that though a draft Bill of Lading was issued in the name of the petitioner as per Exhibit P4 by the 6th respondent, the consignment, which has arrived at the Cochin Port, has been shipped in the name of the 7th respondent from Bandar Abbas Port/Persian Gulf. The petitioner claims that the product is one for which the petitioner has paid 30% of the total amount as per an invoice raised by the 8th respondent.

2. The 6th respondent appears and contends that Exhibit P4 is a 'Non-Negotiable Bill of Lading', issued without even the signature of the carrier which does not create any right on the petitioner. The 6th respondent has confirmed that original Bill of Lading was issued in the name of the 7th respondent for the cargo which has now arrived in the Cochin Port.

3. It is pointed out that the shipper at Exhibit P3 has not been impleaded and the dispute is between the 8th respondent-manufacturer and the petitioner, who claims to have made payments to the 8th respondent. However, the 6th respondent, who is the Shipping Line who carried the goods from the port of lading to the port of discharge has issued a valid Bill of Lading in the name of the 7th respondent.

4. In such circumstances, if the petitioner has paid any money for a consignment and the petitioner is entitled to a consignment of "Paraffin Wax" from the seller, who is the 8th respondent, then the petitioner would have to definitely take appropriate proceedings, which cannot be in a petition under Article 226 of the Constitution. Exhibit P4 does not create any right on the petitioner over the subject consignment. The 7th respondent on production of the original Bill of Lading, is entitled to obtain clearance and get delivery of goods. The petitioner cannot have any claim on the subject consignment which the 6th respondent has transported from the port of discharge to the port of lading and has issued Bill of Lading to the 7th respondent.

The writ petition is dismissed.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]