

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C) .NO. 28723 OF 2015 (M)

PETITIONER(S) :

DRIPLEX WATER ENGINEERING LTD,
KERALA OFFICE: BPCL-KOCHI REFINERY
AMBALAMUGAL, POST BAG NO:2,AMBALAMUGAL, PIN 682 302
REPRESENTED BY ITS DIRECTOR MR.NARAYANAN KUTTY

BY ADV. SRI.K.S.HARIHARAN NAIR

RESPONDENT(S) :

1. INTELLIGENCE INSPECTOR, SQUAD NO.II
COMMERCIAL TAXES, TRICHUR-680003

2. THE ASST. COMMISSIONER, WORKS CONTRACT,
COMMERCIAL TAXES, ERNAKULAM, PIN- 682 018

3. COMMERCIAL TAX OFFICER (ON DUTY)
COMMERCIAL TAX CHECK POST
WALAYAR, PALAKKAD DISTRICT, PIN 678624

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF REGISTRATION CERTIFICATE

EXT.P2: COPY OF CONTRACT AGREEMENT DATED 12.06.2013 ISSUED BY BPCL

EXT.P3: COPY OF INVOICE NO.097 DATED 5.09.2015

EXT.P4: COPY OF E-DECLARATION IN FORM 8F DATED 9.9.2015

EXT.P5: COPY OF NOTICE DATED 18.09.2015 ISSUED BY THE 1ST RESPONDENT

EXT.P6: COPY OF REPLY DATED 19.09.2015

EXT.P7: COPY OF CIRCULAR DATED 24.09.2012 ISSUED BY THE COMMISSIONER OF
COMMERCIAL TAXES

EXT.P8: COPY OF JUDGMENT DATED 22-07.2015

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.28723 of 2015

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Dated this the 23rd day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P5 notice issued to him detaining a consignment of pressure vessel oil coalescer that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondent that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. I have heard the learned counsel for the petitioner and also 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, it is seen that the objection of the respondents is essentially that the item in question is one that the petitioner did not have the authority to deal with in terms of the registration certificate under the CST Act. The respondents found that, the petitioner had issued C Forms for obtaining the goods

at concessional rate of tax, and therefore, suspected possible evasion of tax. Counsel for the petitioner would submit that, the item in question is part of a prefabricated pipe line but he has not produced any material to substantiate the said contention. It is also seen that the description of the item is pressure vessel oil coalescer which appears to be different from a pre-fabricated pipe line. Under the said circumstances, I am of the view that, the detention by the respondents is justified.

(ii) It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submission, I direct the 3rd respondent to release the goods and the vehicle to the petitioner on the petitioner paying 30% of the security deposit amount demanded in Ext.P5 and furnishing a simple bond without surety for the balance amount before the 2nd respondent.

(iii) The 3rd respondent 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.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 3rd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

