

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 29145 of 2015 (P)

PETITIONER(S) :

- 1. M/S.HI STACK INDUSTRIES,
XVII/522, PERUMPADAPPU ROAD, PERUMPADAPPU,
ERNAKULAM, KOCHI- 682 006,
REPRESENTED BY ITS PARTNER NIXON RODRIGUIS.**
- 2. M/S.PIPEFIELD INDIA (P)LTD.,
37/3425, N.H.ROAD, DESABHIMANI JUNCTION,
KALOOR, KOCHI-17,
REPRESENTED BY REJIT.K.B., SENIOR ACCOUNTS MANAGER.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S) :

- 1. THE COMMERCIAL TAX OFFICER (WC)
DEPARTMENT OF COMMERCIAL TAXES,
MATTANCHERRY- 682 002.**
- 2. THE ASST.COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES SPECIAL CIRCLE-2,
SALES TAX COMPLEX, THEVARA, KOCHI- 15.**
- 3. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAXES CHECK POST,
WALAYAR- 678 624.**

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: COPY OF PURCHASE ORDER NO.HIS/PO/115/15 EP ISSUED BY
1ST PETITIONER DATED 06.08.2015.**

**EXHIBIT P2: COPY OF INVOICE ISSUED BY M/S.CONSolidated HOISTS PVT.
LTD., PUNE DATED 07.09.2015.**

**EXHIBIT P3: COPY OF INVOICE ISSUED BY THE 1ST PETITIONER
DATED 16.09.2015.**

**EXHIBIT P4: COPY OF LORRY RECEIPT NO.6369902 OF SRI BALAJI
TRANSPORT LINES (REGD) DATED 09.09.2015.**

**EXHIBIT P5: COPY OF NOTICE IN FORM NO.17A ISSUED BY
THE 3RD RESPONDENT DATED 21.09.2015.**

**EXHIBIT P6: COPY OF OBJECTION FILED BY THE 2ND PETITIONER BEFORE
THE 3RD RESPONDENT DATED 21.09.2015.**

**EXHIBIT P7: COPY OF REVISED NOTICE IN FORM NO.17A ISSUED BY
THE 3RD RESPONDENT DATED 22.09.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.29145 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

The petitioners, who are registered dealers under the Kerala Value Added Tax Act, is aggrieved by Ext.P7 notice issued to them detaining a consignment of Electric Hoist that was being transported at the instance of the petitioners. 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. I have heard the learned counsel appearing for the petitioners and also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P7 notice, it is seen that the objection of the respondents is essentially with regard to the nature of the transaction pursuant to which the goods are being transported. While the petitioners had filed necessary declaration indicating the transaction to be a transit sale and had also covered the transaction with an invoice issued by the 1st petitioner infavour of the 2nd petitioner, the respondents were of the view that the invoice that was produced by the petitioners was a fabricated one to suit the explanation of the petitioners

that the transaction was a transit sale. The learned counsel for the petitioners would point out that the invoices issued by the 1st petitioner infavour of the 2nd petitioner and the movement of the goods was from Pune to Kerala under a declaration which indicated that there was a transit sale in favour of the ultimate consignee. Counsel for the petitioners also submitted that the petitioners are registered dealers in the State and taking note of the said submission and finding that the transportation of the goods was accompanied by documents prescribed under the KVAT Act, I direct the 3rd respondent to release the goods and the vehicle covered by the Ext.P7 detention notice, to the petitioners, on their executing a simple bond without sureties for the security deposit amount demanded in Ext.P7 notice, before the 3rd respondent.

(ii) The 3rd 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.

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

A.K.JAYASANKARAN NAMBIAR
JUDGE

W.P.(C). No.29145 of 2015

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