

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 31689 of 2015 (I)

PETITIONER :

**S.K. SHARMA, AGED 54 YEARS
S/O. SRI. CHANDRA BHAN GAUTAM
PROPRIETOR, M/S. S.K. SHARMA
E-58, LUNAR STREET, BIDHAN NAGAR
DURGAPUR, WEST BENGAL – 713 212.**

**BY ADVS.SRI.SOORAJ T. ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.V.A.HARITHA
SMT.MARY RESHMA GEORGE**

RESPONDENT(S) :

- 1. ASSISTANT COMMISSIONER (APPEALS)
O/O. ASSISTANT COMMISSIONER
COMMERCIAL TAXES, PALAKKAD – 678 001.**
- 2. COMMERCIAL TAX OFFICER (ENQUIRY)
OFFICE OF THE DEPUTY COMMISSIONER
COMMERCIAL TAXES, PALAKKAD – 678 001.**
- 3. COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST, VALAYAR
PALAKKAD – 678 001.**
- 4. THE ORIENTAL BANK OF COMMERCE
2ND FLOOR, NACHAN ROAD, GALERIA MARKET
DURGAPUR, WEST BENGAL – 713 212.**

**R1 TO R3 BY GOVT. PLEADER SMT. K.T. LILLY
R4 BY ADV. SRI.SAJI P. JOSEPH, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF WORK ORDER DATED 1-3-2011.
- EXT.P2 COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 5.10.2011.
- EXT.P3 COPY OF THE BANK GUARANTEE DATED 12.10.2011.
- EXT.P4 COPY OF THE COVERING LETTER ISSUED BY ORIENTAL BANK OF COMMERCE DATED 12.10.2011.
- EXT.P5 COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT PRODUCING THE BANK GUARANTEE.
- EXT.P6 COPY OF THE PENALTY ORDER ISSUED BY THE 2ND RESPONDENT.
- EXT.P7 COPY OF THE POSTAL COVER SHOWING THE DATE OF SERVICE OF EXHIBIT P6.
- EXT.P8 COPY OF THE APPEAL MEMORANDUM NUMBERED AS KVATA 325 OF 2015 DATED 2.6.2015.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.31689 of 2015

.....
Dated this the 16th day of October, 2015

J U D G M E N T

The petitioner, whose goods were detained in transit, obtained a release of the goods on furnishing a bank guarantee for the security deposit amount demanded in the detention notice. Ext.P3 is the bank guarantee. Thereafter, by Ext.P6 order passed in the adjudication proceedings, a penalty was imposed on the petitioner. It is stated that against Ext.P6 order, the petitioner has preferred Ext.P8 appeal before the 1st respondent and the same is pending consideration before the said respondents. In the writ petition, the petitioner is aggrieved by the steps taken by the respondents to encash Ext.P3 bank guarantee.

2. I have heard the learned counsel appearing on behalf of the petitioners as 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 a direction to the 1st respondent to consider and pass orders on Ext.P8 appeal within a period of two months from the date of receipt of a copy of this judgment after hearing the

petitioner. I make it clear that till such time as orders are passed by the 1st respondent as directed and communicated to the petitioner, the respondents shall refrain from encashing Ext.P3 bank guarantee.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/17.10.15