

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 31862 of 2015 (G)

PETITIONER(S):

**M/S IOT ANWESHA ENGINEERING & CONSTRUCTION LTD.,
PALLICHAKKALAYIL ROAD, SHREYAS HOUSE NO.X/314 B,
ERLOOR SOUTH, THIRIPUNITHURA, ERNAKULAM-682 506,
REPRESENTED BY ITS RESIDENTIAL CONSTRUCTION
MANAGER ARINDAM SAMANTA.**

BY ADV. SMT.K.LATHA.

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR-678 103.**

BY GOVT. PLEADER SMT.LILLY. K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE RELEVANT PAGES OF THE WORK ORDER LTTER OF ACCEPTANCE CONTRACT NO.10016321 DATED 08/03/2013 ALONG WITH LETTER OF INTENT NO.LPG/ENG/PT 301/12/IOTA DATED 01/03/2013 BOTH ISSUED BY INDIAN OIL CORPORATION, COCHIN TO THE PETITIONER COMPANY.
- EXT.P2 COPY OF THE SERVICE WORK ORDER DATED 17TH SEPTEMBER 2015 EXECUTED BY THE PETITIONER COMPANY'S GUJARAT OFFICE WITH RED EARTH INFRA PROJECT P.LTD., MUMBAI.
- EXT.P3 COPY OF THE FOR NO.8F DATED 13TH OCTOBER 2015.
- EXT.P3A COPY OF THE DELIVERY NOTE IN FORM NO.15 NO.320720/DN/28574/2015-16 DATED 13TH OCTOBER 2015.
- EXT.P4 COPY OF THE DETENTION NOTICE OR NO.671/1/2015-16 DATED 14/10/2015 ISSUE DBY THE SECOND RESPONDENT U/S.47(2) OF THE KVAT ACT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 31862 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P4 notice issued to him detaining a consignment of Cranes in dismantled form 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 appearing for the petitioner and also the learned Government Pleader appearing for the respondent.

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.P4 notice, it is seen that the objection of the respondent is essentially with regard to the fact that the transportation of the goods was not accompanied by any valid document under the

KVAT Act. It is pointed out that the consignment, which was shown as an inter-state stock transfer effected by M/s. Thyssen Krupp Industries P. Ltd. Gulbarga, to the petitioner, did not carry any document, that indicated the said transaction to be so. In the Form 8-F declaration the petitioner's name is shown as the name of the consignor. Counsel for the petitioner submits that the crane was required in connection with a works contract that was undertaken by the petitioner in Kerala, for M/s. IOC, and the Crane in the dismantle form was being transported from Gulbarga, Karnataka at the instance of the petitioner. It is also stated that the petitioner is a registered dealer. Taking note of the fact that the petitioner is a registered dealer, but also seeing that the action of the respondents in detaining the consignment cannot be said to be unjustified, I direct the 2nd respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on the petitioner paying 30% of the security deposit amount demanded in Ext.P4 and furnishing a simple bond without sureties for the balance security deposit amount demanded in the notice, before the 2nd respondent.

(ii) The 2nd 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.

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(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /19.10.15