

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 33804 of 2015 (A)

PETITIONER(S):

**M/S. OFFSHORE INFRASTRUCTURE LTD,
SREEHARI, MPRA 12, EROOR WEST P.O.,
THRIPUNITHURA REPRESENTED BY ITS
ACCOUNTS & ADMINISTRATION MANAGER
MR.SREEJITH MENON.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, VELANTHAVALAM-678108.**

BY GOVERNMENT PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF EXCISE CUM GTA INVOICE NO.100/10001699 DATED 30/10/15 ISSUED BY CARBOLINE (INDIA)P LTD.CHENNAI TO THE PETITIONER**
- EXHIBIT P2 TRUE COPY OF THE DETENTION NOTICE NO.OR/458/15-16 DATED 1/11/15 ISSUED BY THE R2 U/S.47(C) OF THE KVAT ACT TO THE PETITIONER**
- EXHIBIT P3 TRUE COPY OF THE DESCRIPTION PROVIDED ABOUT THE PRODUCT PYROCRETE GIVEN IN THE WEB SITE OF THE SUPPLIER CARBOLINE INDIA PVT.LTD.**
- EXHIBIT P4 TRUE COPY OF THE ANNEXURE TO CERTIFICATE OF REGISTRATION/RENEWAL FOR TIN 32072032585 DATED 12/12/13**
- EXHIBIT P5 TRUE COPY OF THE LIABILITY CERTIFICATE IN CERTIFICATE FORM IEE PROVIDEDBY THE ASSESSING OFFICER DATED 6/5/15**
- EXHIBIT P6 TRUE COPY OF THE FORM 8F DATED 31/10/15**
- EXHIBIT P7 TRUE COPY OF THE REPLY TO THE P2 DETENTION NOTICE FILED BY THE PETITIONER BEFORE THE R2 DATED 2/11/15.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.33804 of 2015

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Dated this the 6th day of November, 2015

J U D G M E N T

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act is aggrieved by Ext.P2 notice issued to him detaining a consignment of Pyrocrete (chemical) - a fire proofing chemical that is used along with cement for fire proofing steel pipes, that was being transported at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondents 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.P2 detention notice, it is seen that the objection of the respondents is essentially with regard to the classification of the

item. While the petitioner had classified the item as a cement article the respondents were of the view that the item in question was a fire proofing formulation which could not be classified along with cement that was declared under the 8F declaration. It is also the case of the respondents that the petitioner did not have the authorisation to effect interstate purchase of the particular commodity by availing concessional rate under CST. Counsel for the petitioner would submit that the item that was being transported was a chemical that was used along with cement for specified purposes at the site of BPCL Cochin Refinery. It is therefore stated that the authorisation given in respect of cement in the CST registration would cover even the item that was being transported. On a consideration of the said submission of counsel for the petitioner and taking note of the fact that the transportation of the commodity was duly accompanied by valid documents as contemplated under the KVAT Act, as also the fact that the petitioner is a registered dealer, I direct the 2nd respondent to release the goods and the vehicle to the petitioner on the

petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P2.

(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.

(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

mns/06.11.15