

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 38239 of 2015 (D)

PETITIONER:

**M/S SCHINDLER INDIA PVT. LTD.,
32/1937D, GROUND FLOOR,
SURABHI BYLAN, NR.ANCHUMANA TEMPLE,
EDAPPALLY POST, ERNAKULAM, COCHIN - 682 024,
REPRESENTED BY IT'S DEPUTY GENERAL MANAGER
- FIELD OPERATIONS, COCHIN MR.SYED ABUTHAHIR.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE INTELLIGENCE INSPECTOR, SQUAD NO.III,
COMMERCIAL TAXES, ALAPUZHA,
CAMP AT KALAKODE - 690 031.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EEXT. P1 : THE TRUE COPY OF THE WORKS CONTRACT AGREEMENT ISSUED BY THE PETITIONER COMPANY TO M/S.ARTECH REALTORS P LTD, THIRUVANANTHAPURAM DATED 15.5.2014.
- EXT. P2 : THE TRUE COPY OF THE DELIVERY CHALLAN CUM PROFORMA INVOICE ISSUED BY THE PETITIONER TO M/S.ARTCH REALTORS P LTD, THIRUVANANTHAPURAM DATED 9.12.2015.
- EXT. P3 : THE TRUE COPY OF THE FORM 15 DATED 9.12.2015 ISSUED BY THE PETITIONER ALONG WITH SELF-DECLARATION DATED 9.12.2015.
- EXT. P4 : THE TRUE COPY OF THE DETENTION NOTICE OR NO.564/15-16 DATED 9.12.2015 ISSUED BY THE SECOND RESPONDENT U/S 47(2) OF THE KVAT ACT TO THE PETITIONER.
- EXT. P5 : THE TRUE COPY OF THE FIRST PAGE OF THE QUARTERLY RETURN OF THE PETITIONER FOR THE PERIOD FROM 1-OCT-14 TO 31-DEC-14.
- EXT. P6 : THE TRUE COPY OF THE REPLY DATED 11.12.2015 FILED BY THE PETITIONER AGAINST THIS P4 DETENTION NOTICE.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 38239 of 2015

Dated this the 16th day of December 2015

JUDGMENT

A consignment of Lift elevators and parts, that was being transported at the instance of the petitioner was detained by the respondents. Ext.P4 is the detention notice. 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 appearing for the petitioner 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.P4 notice, it is seen that the objection of the respondent is essentially that the petitioner, who is the consignee of the goods, had shown the transaction as a stock transfer, but did not have a place of business in

the premises to which the goods were consigned. It was also found on verification of the monthly returns filed for July-September 2015, that no work site was declared in the name and style of M/s.Artech Realtors Pvt. Ltd., for whom the petitioner was doing the work. Counsel for the petitioner would submit that the goods in question were being transported for the purpose of works contract and the petitioner raises the invoices, only on completion of the work and it is only thereafter that the details of the works contract executed are furnished in the return filed with the department. It is pointed out that the transportation of the goods was duly accompanied by valid documents and the petitioner is a registered dealer within the State. Taking note of the said submission of counsel for the petitioner, I direct the 2nd respondent to release the goods covered by Ext.P4 detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in Ext.P4 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.

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

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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