IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 04TH DAY OF MARCH 2020 / 14TH PHALGUNA, 1941

WP(C).No.6350 OF 2020(P)

PETITIONER/S:

SHREE ENGINEERS CONTRACTORS P LTD
416,PREM TRADE CENTRE,MAHARANI ROAD,INDORE,452007,MADHYA PRADESH,INDIA,REPRESENTED BY IT'S MANAGER (COMMERCIAL)MR.KALESA KURUP.K.

BY ADVS.
SMT.K.LATHA
SMT.JESSY MANUEL

RESPONDENT/S:

THE ASSISTANT STATE TAX OFFICER
SQUAD NO.II,KERALA STATE GST DEPARTMENT,KASARGOD-671122.

OTHER PRESENT:

DR THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 4th day of March 2020

Petitioner is a Private Limited company registered under GST Act with GSTIN Number 23AAPC30963AIZL, which entered into a works contract agreement with M/S Offshore Infrastructure Limited, Mumbai to execute the work of Piping and Equipment Insulation works for offsite job for propellene Derivative Petrochemical Projects of M/s.Bharat Petroleum Corporation Limited, Kochi Refinery, Cochin. The aforementioned facts are evidenced from Ext.P1.

2. M/s. Offshore Infrastructure Limited is a registered dealer under GST in Kerala and have been executing the works contract of BPCL and paying GST for entire works executing in Kerala, whereas

the petitioner is only a sub contractor. The goods in question was transported on the strength of three delivery challans dated 22.02.2020, produced as Exts.P2, P2(A) and P2(B). They also come with e-way bills and declaration produced as Exts.P2D and P2E. Smt. Latha.K, learned counsel appearing on behalf of the petitioner submits that, for the reasons best known to the officers of the GST, goods were detained vide Ext.P3, and issued a memo under Section 129(3) of the Central Goods and Services Tax Act, 2017, on the premise that the consignment was not accompanied by invoice. The said requirement is not necessary in view of the plain and simple reading of the provisions of Rule 138(A) of the Central Goods and Services Tax Act, 2017. The petitioner is willing to submit, for the release of the detained goods, half of the bank guarantee and half indemnity bond.

3. Dr. Tushara James, learned counsel

appearing for the State opposes the aforementioned contention on the premise that it is not a case of pure and simple application of Rule 138(A) as the pith and substance of the averments as well as the works contract leaves no manner of doubt that for the purpose of work contract, delivery challan is not sufficient for compliance of the provisions of the Act, 2017. In this regard, reliance has been relplaced to Rule 55 and Schedule II of the Act, 2017. She also referred to the provisions of definition of works contract defined under Section 2(119) of Act, 2017. For the purpose of interim relief, attention of this Court have been drawn to the provisions of Section 129(1)(b) and 129(1)(c) as well as Rule 140 of Act, 2017. For the purpose of provisional release of the seized goods, security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty is liable to be paid, and urges this Court for dismissal of the writ petition with a further request that all these factors would be considered by the adjudicating authority.

4. Heard learned counsel for the parties and appraised the particulars. Petitioner is not willing to pay the security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty, without expressing any opinion on the merits as to strict applicability of Rule 138(A) or Rule 55 read with Section 129 or Rule 140. In my view, it is in the domain of the adjudicating authority. Since the goods are already lying seized with effect from 27.02.2020, the goods can be released on furnishing of Bank guarantee for the full amount as per provision of Section 129 of CGST Act, 2017.

5. I dispose of the writ petition with a direction to the adjudicating authority to adjudicate the matter with regard to

the goods being in compliance with the provisions of the Act or otherwise as expeditiously as possible, preferably within a period of 45 days from the receipt of the certified copy of this judgment, in accordance with law, after affording opportunity of hearing to the parties.

The writ petition is disposed of as above.

Sd/-

AMIT RAWAL

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE SERVICE ORDER NO.OIL/3157/18-19/W0/02/0063 DATED 14.2.2019 ALONG WITH CONNECTED DETAILS OF WORKS CONTRACT AGREEMENT ENTERED BY THE PETITIONER COMPANY WITH M/S OFFSHORE INFRASTRUCTURE LIMITED,27,UDYOG KSHETRA,MULUND GOREGON LINK ROAD,MULUND(W)MUMBAI 4000080.
EXHIBIT P2	THE TRUE COPY OF THE DELIVERY CHALLANS NO.SECPLC19-20/606,DATED 22.02.2020 ISSUED BY THE PETITIONER
EXHIBIT P2A	THE TRUE COPY OF THE DELIVERY CHALLAN SECPLC19-20/607,DATZED 22.02.2020 ISSUED BY THE PETITIONER
EXHIBIT P2B	THE TRUE COPY OF THE DELIVERY CHALLAN SECPLC19-20/608,ALL DATED 22.02.2020 ISSUED BY THE PETITIONER
EXHIBIT P2C	THE TRUE C0PY OF THE LR COPIES OF THE TRANSPORTATIONS OF THE GOODS
EXHIBIT P2D	THE TRUE COPY OF THE 3 e-WAY BILLS OF THESE TRANSPORATION OF GOODS
EXHIBIT P2E	THE TRUE COPY OF THE DECLARATION DATED 22-2-2020 ISSUED BY THE PETITIONER
EXHIBIT P3	THE TRUE COPY OF THE DETENTION ORDER IN FORM GST MOV-04,FORM GST MOV-06 AND FORM GST MOV-07 ALL DATED 27.02.2020 ISSUED BY THE RESPONDENT TO THE PETITIONER.