

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 21530 of 2015 (M)

PETITIONER(S):

**LALITHA MURALIDHARAN,
PROPRIETRIX, SAI LALITH FRAGRANCE, PLOT NO. B-25,
PHASE II, MADRASS EXPORT PROCESSING ZONE, THAMBARAM
CHENNAI-45.**

**BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.K.T.POULOSE (KORATTY)
SRI.DAVID JOHN**

RESPONDENT(S):

- 1. THE COMMISSIONER OF COMMERCIAL TAXES,
TAXES TOWER, KILLIPALAM, THIRUVANANTHAPURAM-695 002**
- 2. THE PRINCIPAL CONSERVATOR OF FORESTES,
THIRUVANANTHAPURAM-695 001.**
- 3. MSTC LIMITED,
MINI RATNA, 19/5/ & 19/6, 3RD FLOOR,
KEERAM TOWERS, CUNNINGHAM ROAD,
BANGLORE-560 052.**

R1 & 2 BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON 3/11/2015 DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE RENEWAL LETTER OF APPROVAL ISSUED BY THE ASSISTANT DEVELOPMENT COMMISSIONER MEPZ SPECIAL ECONOMIC ZONE AND HEOS CHENNAI DT. 7/2/13
- EX.P2: TRUE COPY OF THE PURCHASE ORDER A1-MALEK-FZE UAE DT. 9/1/15
- EXT.P3: TRUE COPY OF THE PURCHASE ORDER ISSUED BY A1-MALEK-FZE-UAE DT. 21/1/15
- EXT.P4: TRUE COPY OF THE PURCHASE ORDER ISSUED BY A1-MALEPPPK-FZE-UAE DT. 2/2/15
- EXT.P5: TRUE COPY OF THE AUCTION NOTIFICATION DT. 27/12/14
- EXT.P6: TRUE COPY OF THE GOVERNMENT ORDER DT. 18/3/14
- EXT.P7: TRUE COPY OF THE SALE INTIMATION LETTER DT. 5/2/15
- EXT.P8: TRUE COPY OF THE DSLE INTIMATION LETTER DT. 6/2/15
- EXT.P9: TRUE COPY OF THE ACCEPTANCE LETTER ISSUED BY THE 4TH RESPONDENT RESPECT OF LOT NO. 76/15 DT. 12/2/15
- EXT.P10: TRUE COPY OF THE LETTE OF ACCEPTANCE IN RESPECT OF LOT NUMBER 101/15 AND 106/15 DT, 12/2/15
- EXT.P11: TRUE COPY OF THE VALUE ADDED TAX CLEARANCE CERTIFICATE DT. 20/4/15 IN RESPECT OF LOT NO. 101/15 AND 106/15 DT. 20/4/15
- EXT.P12: TRUE COPY OF THE CERTIFICATE IN RESPECT OF LOT NO. 76/15 ST. 21/5/15
- EXTP13: TRUE COPY OF THE LETTER DT. 6/2/15 ISSUED BY THE PETITIONER TO THE 2ND RSPONDENT
- EXT.P14: TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DT. 7/3/15
- EXT.P15: TRUE COPY OF THE LETTER ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, CHENNAI TO THE PETITIONER DT. 16/12/13
- EXT.P16: TRUE COPY OF THE LETTER ISSUED BY THE FOREST RANGE OFFICER, MARAYOOR RANGE DT. 19/2/15
- EXT.P17: TRUE COPY OF THE INTERIM ORDER PASSED IN WPC NO. 9096/15 DT. 31/3/15

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**EXT.P18: TRUE COPY OF THE REPRESENTATION DT. 7/4/15 BEFORE THE 1ST
RESPONDENT**

**EXT.P19: TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DT.
30/4/15**

**EXT.P20: TRUE COPY OF THE JUDGMENT DT. 27/5/15 IN WPC NO. 9036/15
BEFORE THIS HON'BLE COURT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21530 OF 2015 (M)

Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioner in this writ petition runs a unit in the Madras Export Processing Zone, Tambaram, Chennai. The said unit is engaged in the manufacture of essential oils, natural extracts and products of sandalwood. As part of its business operations, the petitioner sources sandalwood from Marayoor in Kerala, where it participates in auctions conducted by the Forest Department of the State of Kerala and purchases sandalwood. The issue in the present writ petition is regarding the liability of the petitioner to pay tax under the Kerala Value Added Tax Act, hereinafter referred to as the 'KVAT Act', on the purchases of sandalwood. While the petitioner maintains that she is not liable to pay local tax on the sandalwood purchased by her at the auction, since the goods so purchased are taken by her directly to the unit in the Madras Export Processing Zone, it is the case of the respondents that the transaction of sale would attract tax under the KVAT Act since the sale was concluded in the State of Kerala.

2. The brief facts that are necessary for a disposal of this case may now be noticed;

The petitioner, who is a registered dealer under the Tamil Nadu Value Added Tax Act as well as the Central Sales Tax Act (hereinafter referred to as the 'CST Act'), is an exporter of articles like pre Indian Sandalwood chips and chips powder. These items are procured from the Domestic Tariff Area (hereinafter referred to as the 'DTA') and then exported to various countries against export orders placed by foreign buyers. Against Exts.P2 to P4 purchase orders obtained by the petitioner, she wanted to purchase sandalwood from the respondents and she, accordingly, participated in the e-auction held by the respondents pursuant to Ext.P5 auction notice. The State Government through Ext.P6 Government Order dated 18.03.2014 notified the terms of the e-auction of sandalwood at Marayoor. At the auction so held, the petitioner's bid was found to be the highest in respect of three lots viz. Lot No.76/2015, 101/2015 and 106/2015 and she was given a letter of acceptance of her bid in respect of the said three lots. Later, the bids were formally confirmed in favour of the petitioner, as evidenced by Exts.P7 to P10 and she was asked to pay the value of the

goods as also the applicable tax under the KVAT Act in respect of the goods. This was paid by the petitioner and she took delivery of the goods. Thereafter, the petitioner filed W.P.(C)No.9096/2015 praying for a declaration that no tax under the KVAT Act would be payable in respect of the purchases effected by her. By Ext.P17 interim order in the said writ petition, the petitioner was permitted to approach the 2nd respondent with an application for exemption from tax on the sales effected to her. She accordingly preferred Ext.P18 representation before the 2nd respondent. The said representation was, however, rejected by Ext.P19 communication informing the petitioner that no exemption was available. The petitioner, therefore, withdrew W.P.(C).No.9096/2015 without prejudice to her right to file a fresh writ petition challenging the order denying exemption. This writ petition was then filed challenging Exts.P9, P10, P14, P16 and P19 to the extent they contemplate a payment of tax under the KVAT Act on the sale value of goods sold to the petitioner, and seeking, inter alia, a declaration to the effect that a sale effected to a unit in the Special Economic Zone established under the Special Economic Zone Act, 2005, by any dealer in the DTA, is an export sale and no value added tax can be levied or collected by the respondents in

respect of such a sale.

3. A statement has been filed on behalf of the 1st respondent wherein the respondent would maintain that the sales effected to the petitioner were concluded in the State of Kerala and hence, the petitioner is liable to pay tax under the KVAT Act on the sale value of the goods sold to her.

4. I have heard the learned Senior Counsel Sri.Raju Joseph for the petitioner and the learned Government Pleader Sri.Liju V Stephen for the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the following two issues arise for consideration in the instant case;

- (i) Whether the movement of the goods from Kerala to the unit of the petitioner in the Madras Export Processing Zone, pursuant to the sale effected by the respondents, could be considered an “export” of the goods outside the territory of India?
- (ii) If so, whether the sale effected by the respondents

occasioned the export for the purposes of Section 5(1) of the CST Act?

Issue No.1:

It is the specific contention of the learned Senior Counsel for the petitioner that, as per the scheme and specific provisions of the Special Economic Zones Act, 2005 (hereinafter referred to as the 'SEZ Act'), Special Economic Zones (SEZ) created under the said Act are seen as foreign countries for the purposes of trade and hence, when the goods sold to the petitioner were transported from the DTA to the unit of the petitioner in the SEZ, there was an export of the goods for the purposes of Article 286 of the Constitution of India read with Section 5(1) of the CST Act. It is contended that the Special Economic Zones Act, 2005 should also be seen as a law enacted by the Parliament pursuant to Article 286(2) of the Constitution and hence the definition of the word "export" under the said Act would also be relevant in deciding the issue of whether a sale resulted in an export of the goods. It is contended that even if the enactment of the SEZ Act cannot be traced to Article 286(2) of the Constitution, the said Act being enacted by the Parliament, its provisions cannot be ignored. It

is also pointed out, with reference to Ext.P15 clarification issued by the authorities under the TNVAT Act that in Tamil Nadu, such sales are treated as Zero Rate Sales for the purposes of the TNVAT Act.

6. Before dealing with the contentions urged on behalf of the petitioner, it would be apposite to refer to some of the legal provisions that have a bearing on the issue of sales in the course of exports.

Article 286 of the Constitution of India reads as follows:

“286. Restrictions as to imposition of tax on the sale or purchase of goods-

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) Outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1),

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,-

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-

clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”

7. It is clear from a perusal of the aforesaid provision that under the Constitution there is a prohibition, inter alia, on the levy of tax by State Legislatures on sales and purchases of goods, if the same are in the course of import into or export out of the territorial limits of India. The Parliament, however, was to formulate by a law, the principles for determining when a sale or purchase of goods took place, outside the state or in the course of import of the goods into, or export of the goods out of, the territory of India. The law enacted by Parliament in this regard is the Central Sales Tax Act, 1956. Section 5 of the CST Act, which is relevant for the purposes of the instant case, reads as follows:

5. When is a sale or purchase of goods said to take place in the course of import or export:-

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India;

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

[(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.]

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in course of the export of goods out of the territory of India.

Explanation:- For the purpose of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.]

8. It will be seen from a reading of the above provision that there are certain transactions that, although they take place within the territorial limits of India, are nevertheless deemed to be in the

course of export out of the territory of India. The said provisions have to be read in the backdrop of the concept of export as understood under the CST Act. When so read it follows that only if the sale or purchase occasions a movement of goods to a place outside the territory of India, or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India, can it be said that there is a sale or purchase that takes place in the course of import or export. An export, for the purposes of the CST Act, commences when the goods cross the customs frontiers of India and culminates when the goods cross the territorial limits of India. It is significant to note, in this connection, that the phrase “crossing the customs frontiers of India” is defined in Section 2(ab) of the CST Act as follows:

2. Definitions:- In this Act, unless the context otherwise requires:-

- (a)
- (aa)

(ab) “crossing the customs frontiers of India” means cross the limits of the area of a customs station in which imported goods or exported goods are ordinarily kept before clearance by customs authorities.

Explanation:- For the purposes of this clause, “customs station” and customs authorities' shall have the same meanings as in the Customs Act, 1962 (52 of 1962)].

9. The above definition also indicates that the meaning to be attributed to the word “export”, as also the phrase “crossing the customs frontiers of India”, under the CST Act is the same as attributable to the word/phrase under the Customs Act, 1962. A sale effected to a unit in an SEZ cannot, therefore, on a plain reading of the CST Act, be deemed to be an export for the purposes of the said Act.

10. I must, however, advert to the provisions of the SEZ Act, 2005 for it is the contention of the learned Senior Counsel for the petitioner that the SEZ Act is also a law enacted by Parliament, and the said Act also provides a definition for the term “export”, which can be taken into consideration when examining the issue of whether or not a sale occasioned an export of the goods out of the territory of India.

11. The SEZ Act was enacted with the object of providing an internationally competitive environment for exports by making available goods and services free of taxes and duties, supported by

integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export led growth. Section 7 of the Act provides for exemption from certain taxes, duties and cesses and reads as follows:

“7. Exemption from taxes, duties or cess.- Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by.-

- (i) a Unit in a Special Economic Zone; or
- (ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.”

12. The words “export” and “import” are defined in Section 2 of the Act as follows:

2.Definitions.-In this Act, unless the context otherwise requires,-

(m) “export” means-

- (i) taking goods, or providing services, out of India, from a special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different special Economic Zone;

(o) “import means-

- (i) bringing goods or receiving services, in a special Economic Zone, by a unit or developer

from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or

(ii)receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;"

13. The provisions of Sections 49 to 53 of the SEZ Act are also relevant and they read as follows:

"49. Power to modify provisions of this Act or other enactments in relation to Special Economic Zones.-(1)The Central Government may, by notification, direct that any of the provisions of this Act(other than sections 54 to 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules of regulations) specified in the notification-

(a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or

(b) shall apply to a Special Economic Zone or a class of Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification.

Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rules or regulations made thereunder or any notification or order issued or direction given or scheme made thereunder so far as such modification, rule, regulation, notification,order or direction or scheme relates

to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provided funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.

(2) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

50. Power of State Government to grant exemption.- The State Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law-

(a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;

(b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

51. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

52. Certain provisions not to apply.- (1)

The provisions contained in the Chapter XA of the Customs Act, 1962 (52 of 1962) and the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs Procedure) Regulations, 2003 made thereunder shall not, with effect from such date as the Central Government by notification appoint, apply to the Special Economic Zone.

(2) Notwithstanding anything contained in sub-section (1), all offences committed, before the commencement of this Act, under any provisions of the Customs Act, 1962 (52 of 1962) and the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs procedure) Regulations, 2003 made thereunder, shall continue to be governed by the said act or rules, as the case may be.

(3) Anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any permission or authorisation or exemption granted or any document or instrument executed under the said provisions of the Act, rules and regulations referred to in sub-section (1) shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been done or taken or made or issued or granted under the corresponding provisions of the Act or rules or regulations referred to in that sub-section.

53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases:- (1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport,

inland container depot, land station and land customs stations, as the case may be under section 7 of the Customs Act, 1962 (52 of 1962):

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.

14. It will be seen from a reading of Section 53 of the SEZ Act that an SEZ is deemed to be a territory outside the customs territory of India only for the purposes of undertaking authorised operations. The term “authorised operations” is defined in Section 2(c) of the Act as meaning operations which may be authorised under Section 4(2) and Section 15(9) of the Act. Section 4(2) and Section 15(9) speak of such operations, which are authorised by the Central Government, and in respect of which the Developer of a unit has the authorisation of the Board of Approval. Further, an overview of the provisions of the SEZ Act indicates that it is a special law enacted with the specific object of providing an internationally competitive environment for exports and there are specific provisions therein that are tailored to provide tax exemptions and other benefits to the units situated in the SEZ’s. The overriding effect given to provisions of the Act is only with a view to further the objects of the Act and cannot confer on the units in the SEZ a status other than what is contemplated for the

purposes of their functioning under the Act. It is against this schematic backdrop that one has to consider whether a sale from a unit in the DTA to a unit in the SEZ can be treated as an export for all purposes, including for the purposes of the CST Act. As already noted, the words “export” and “import” have a different connotation under the SEZ Act, when compared with the definition of the same words under the Customs Act. While “export” is defined as including a supply from a unit in the DTA to a unit in the SEZ, the word also includes the activity of taking goods or providing services out of India from a unit in the SEZ. Similarly, the word “import” does not include the bringing of goods into a unit in the SEZ, from the DTA. It is also relevant to note that Section 7 of the SEZ Act that deals with exemption from taxes, duties and cesses does not specifically grant an exemption from Customs duties or CST or State VAT levies. The exemption from State VAT levies is separately contemplated under Section 50 of the SEZ Act and is left to the discretion of the State Legislatures. It is apparent, therefore, that while enacting the SEZ Act, the Parliament did not intend to treat a supply from the DTA to a unit in the SEZ as an export for the purposes of the CST Act or Article 286 of the Constitution. Had the Parliament any such intention, then it

would not have been necessary to provide for an exemption from State taxes, levies and duties, at the discretion of State Legislatures for, any sale of goods to an SEZ unit, would have qualified as an export sale for the purpose of the CST Act, and there would have been no necessity for an exemption provision. As a matter of fact, even under the CST Act, through an amendment that was brought in with effect from 10.09.2004, Section 8(6) of the Act was amended to provide an exemption from CST in cases where there is an inter-state sale effected to registered dealers who are permitted to set up units in SEZ's. The said provision reads as follows:

8. Rates of tax on sales in the course of inter state trade or commerce:- [(1)

(2)

(3)

(4)

(5)

(6) Notwithstanding anything contained in this Section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic Zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic Zone by the authority specified by the Central Government in

this behalf.]

15. Similarly, under the KVAT Act, there is a provision that grants exemption in respect of sale of goods to units in a SEZ, under certain circumstances. Section 6(7)(b) of the KVAT Act reads as follows:

6. Levy of tax on sale or purchase of goods:-

(7) Notwithstanding anything contained in sub-section (1), -

(a)

(b) sale of any building materials, industrial inputs, plant and machinery including components, spares, tools and consumables in relation thereto to any developer or industrial unit or establishments situated in any Special Economic Zone in the State for setting up the unit or use in the manufacture of other goods shall, subject to such conditions or restrictions, as may be prescribed, be exempted from tax.]

16. The aforesaid provisions seem to suggest that the legislative intention under the SEZ Act was to treat sales to units in the SEZ as taxable sales, subject to specific exemptions that were provided for, either under the CST Act or under the respective State legislations. In the absence of any exemption, therefore, such sales effected from the DTA to a unit in the SEZ would not qualify to be export sales for the purposes of S. 5 (1) of the CST Act or for the purposes of Art. 286 of

the Constitution of India. I, therefore, find against the petitioner on this issue.

Issue No.2:

It is the contention of the learned Senior Counsel for the petitioner that the sale effected by the respondents to the petitioner, and the movement of the goods to her unit in the Madras EPZ, are so integrally connected that it could be said that the sale occasioned the movement of the goods to the unit in the EPZ. It is pointed out that the integral nature of the transaction could be gathered from the fact that the petitioner had introduced herself as having a unit in the SEZ before submitting its bids, she had participated in the e-tender from the unit in the SEZ, the acceptance of her bid was intimated to her at the same address, the sale consideration was paid from the said address and the petitioner does not have any place of business in Kerala. It is the petitioner's contention that the attendant circumstances clearly indicated that the goods were to move to her unit in the Madras EPZ pursuant to the sale that the said movement could be seen as an implied term of the contract of sale between the State of Kerala and the petitioner. While the material produced in this

writ petition is insufficient to hold that there was any understanding between the petitioner and the respondents, either express or implied, that the goods would move from Kerala to the petitioner's unit in the Madras SEZ as a direct consequence of, or incidental to, the sale transaction between them, I am of the view that I need not deliberate upon this issue since I have already found that a movement of the goods from Kerala to the unit of the petitioner in the SEZ would not qualify as an export for the purposes of Section 5(1) of the CST Act or for the purposes of Article 286 of the Constitution. It is also relevant to note that the express terms of Ext.P6 - "Special Terms and Conditions of the e-auction of sandalwood at Marayoor Sandal Depot of Kerala Forest department", and in particular clauses 11 and 14(v) thereof, clearly contemplated that prevalent rates of KVAT would be applicable to all successful bidders irrespective of destination of transportation of materials and purpose.

17. Learned Senior Counsel for the petitioner would contend that, even if the sale to the petitioner does not qualify as an export sale for the purposes of Section 5(1) of the CST Act, the sale could be viewed as a penultimate sale prior to export for the purposes of

Section 5(3) of the CST Act or even qualify for an exemption in terms of Section 8(6) of the CST Act. I find, however, that there is no material produced in the writ petition to substantiate the arguments advanced by the learned Senior Counsel and hence, I am of the view that the said contentions would have to be raised in separate proceedings, with reference to supporting documents that would establish that the statutory criteria for getting the benefits envisaged under the CST Act are fulfilled. I therefore leave the said issues open to be decided in appropriate proceedings.

The writ petition is thus dismissed but, with no order as to costs.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp