

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 27939 of 2015 (N)

PETITIONER(S):

**P.M.SATHAR, PROPRIETOR,
M/S.N R S TIMBER TRADERS, DOOR NO.II/90,
ERATTUPETTA PANCHAYATH, ERATTUPETTA P.O.,
ERATTUPETTA-686121, KOTTAYAM DISTRICT.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. INTELLIGENCE INSPECTOR,
SQUAD NO.VII, COMMERCIAL TAXES, THEVARA,
ERNAKULAM, COCHIN-682018.**
- 2. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, PALA-690502.**
- 3. COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDING, NEAR MUSEUM,
THIRUVANANTHAPURAM-695033.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF REGISTRATION DATED 29/5/2007 UNDER THE KERALA VALUE ADDED TAX ACT, ISSUED TO PETITIONER BY R2**
- P2: COPY OF TAX INVOICE NO.37 DATED 13/9/15 RAISED BY PETITIONER FOR SALE OF 81 LOGS OF COMPARATIVELY LOW GIRTH TEAK TIMBER, MEASURING 14.179 CUBIC METERS, TO ANOTHER REGISTERED DEALER UNDER THE KVAT ACT, PRICED WITH MARKET RATE ACCORDING TO GIRTH**
- P3: COPY OF ONLINE DELIVERY NOTE DATED 13/9/15 GENERATED AT 07/08 PM FOR TRANSPORT OF 81 LOGS OF TIMBER TO PAYYOLI IN KOZHIKODE PURSUANT TO EXT.P2 TAX INVOICE**
- P4: COPY OF NOTICE NO.OR.VII/426/15-16 DATED 14/9/15 U/S.47(2) OF THE KVAT ACT, ISSUED BY R1 TO PETITIONER THROUGH THE DRIVER, SUSPECTING UNDER VALUATION**
- P5: COPY OF CIRCULAR NO.13/13 DATED 26/7/13 ISSUED BY R3 COMMISSIONER OF COMMERCIAL TAXSES, THIRUVANANTHAPURAM DIRCTING ITS SUBORDINATES NOT TO DETAIN TIMBER ON THE BASIS OF UNDER VALUATION WHEN THE TRANSACTION IS DEALER TO DEALER**
- P5(A): COPY OF PHOTOGRAPH OF THE 81 LOGS OF TIMBER LOADED IN KL 07 BQ 6757 LORRY, DETAINED BY R1 IN ISSUING EXT.P4 NOTICE.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.27939 of 2015

Dated this the 16th day of September, 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 timber logs 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 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 respondents is essentially with regard to an alleged undervaluation of the consignment. I find, however, that the detention notice does not make any reference to any standard market rate or floor rate, against which the price declared by the petitioner is

compared, so as to arrive at an inference of undervaluation. Taking note of the fact that there is no dispute with regard to the documents accompanying the consignment, and also taking into account the fact that the petitioner is a registered dealer, I direct the 1st respondent to release the goods and the vehicle covered by the detention notice, to the petitioner, on his executing a simple bond without sureties for the security deposit amount demanded in the notice, before the 1st respondent.

(ii) The 1st 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, untrammelled by the observations in this judgment.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 1st respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE