IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 33332 of 2015 (N)

PETITIONER :

M/S.UNITED TIMBER CORPORATION,
CC 31/1564, THAMMANAM, COCHIN-682 032,
ERNAKULAM DISTRICT, REPRESENTED BY ITS MANAGING PARTNER, SRI. MOHAMMED K. NOUSHAD.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
----

1. **INTELLIGENCE INSPECTOR, COMMERCIAL TAXES, SQUAD NO.VIII, ERNAKULAM, THEVARA, COCHIN-682 015**

2. **INTELLIGENCE OFFICER, COMMERCIAL TAXES, SQUAD NO.VIII, ERNAKULAM, THEVARA, COCHIN-682 015**

3. **ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE, MINI CIVIL STATION, PERUMBAVOOR-633 542**

4. **INSPECTING ASSISTANT COMMISSIONER (INT), COMMERCIAL TAXES, THEVARA, COCHIN-682 015**

5. **COMMISSIONER OF COMMERCIAL TAXES, TAX TOWERS, KARAMANA.P.O., THIRUVANANTHAPURAM-695 022.**

BY GOVERNMENT PLEADER SMT. LILLY.KT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.33332/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE COMMERCIAL INVOICE NO.074/1516 DATED 11/10/2015 FOR TEAK SWAN TIMBER 24.967 CUBIC METER RAISED ON PETITIONER FIRM BY EVERGLOBAL TRADING LLC, UAE, WITH PACKING LIST FOR LOADING IN CONTAINER NO.FCIU4455883

P2 COPY OF THE BILL OF ENTRY NO.2957195 DATED 17/10/2015 ISSUED BY CUSTOMS AUTHORITY IN COCHIN PORT FOR IMPORT OF TEAK SWAN TIMBER WITH EXT.P1 COMMERCIAL INVOICE

P3 COPY OF THE ONLINE DELIVERY NOTE NO.321531/DN/29463/2015 DATED 26/10/2015 GENERATED BY PETITIONER, IN ACCORDANCE WITH THE KVAT ACT

P4 COPY OF THE ONLINE FORM NO.8F ADVANCE TAX UTILIZATION RECEIPT DATED 26/10/2015, GENERATED BY PETITIONER, AFTER PAYING ADVANCE TAX ON FLOOR RATE @ RS.2100/- C.FT

P4(A) COPY OF THE CIRCULAR NO.22/2012 DATED 01/08/2012 ISSUED BY 5TH RESPONDENT IN FIXING FLOOR RATE FOR IMPORTED TIMBER, FOR PAYMENT OF ADVANCE TAX AND SECURITY.

P4(B) COPY OF THE CIRCULAR NO.17/2012 DATED 18/06/2012 ISSUED BY 5TH RESPONDENT IN FIXING FLOOR RATE FOR IMPORTED TIMBER, WHICH WAS REVISED WITH EXT.P4 (A) CIRCULAR

P5 COPY OF THE FORM NO.8B INVOICE NO.B040/15-16 DATED 27/10/2015 RAISED BY PETITIONER FOR THE SALE OF TEAK SWAN TIMBER IMPORTED AS PER EXT.P2 BILL OF ENTRY

P5(A) COPY OF THE ONLINE DELIVERY NOTE NO.321531/DN/29631/2015 DATED 27/10/2015 GENERATED BY PETITIONER AND ACCOMPANIED WITH INVOICE, MADE AVAILABLE TO THE TRUCK AND CONTAINER IN WHICH THE GOODS ARE CLEARED FROM COCHIN PORT FOR DIRECT TRANSPORTATION TO CUSTOMER IN THEVARA

P6 COPY OF THE NOTICE NO.OR.592/15-16 DATED 29/10/2015 ISSUED TO PETITIONER BY 1ST RESPONDENT U/S. 47(2) OF KVAT ACT, DEMANDING SECURITY DEPOSIT, ALLEGING UNDERVALUATION BASED ON EXT.P4 (B) CIRCULAR

P7 COPY OF THE REPLY DATED 30/10/2015 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT, POINTING THAT ADVANCE TAX IS PAID AT THE TIME OF IMPORT AS PER EXT.P4 CIRCULAR

P8 COPY OF THE LETTER DATED 30/10/2015 ISSUED PETITIONER ON 31/10/2015, REJECTING EXT.P7 REPLY UNDER THE INSTRUCTIONS OF 2ND RESPONDENT

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

sts P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

- -

W.P.(C) No.33332 of 2015

- -

Dated this the 2nd day of November, 2015

JUDGMENT

The petitioner, who is a registered dealer under the Kerala Value Added Tax Act, is aggrieved by Ext.P6 notice issued to him detaining a consignment of imported Teak wood (Sawn size) 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.P6 notice, it is seen that the objection of the respondents is essentially that the petitioner had not paid advance tax by

adopting the floor rate fixed by the Commercial Taxes Department while transporting the goods in question. It is stated that the floor rate fixed by the Commercial Tax Department is 2,340/- per cubic feet and the petitioner had adopted a figure of Rs.2099/- per cubic feet while paying the advance tax. Counsel for the petitioner would submit that the floor rate fixed for the imported Teak logs although initially was Rs.2,340/- per cubic feet, it was subsequently re-fixed at Rs.2,100/- per cubic feet by a circular No.22/2012 dated 01-08-2012. It was the revised rate per cubit feet that was adopted while paying advance tax in respect of the consignment. It is also pointed out that the petitioner is a registered dealer and the transportation of the goods was covered by valid documents as contemplated under the KVAT Act.

(ii) Taking note of the said contention of counsel for the petitioner and finding that the petitioner had paid the advance tax by adopting the floor rate mentioned in Ext.P4(A) circular dated 01.08.2012, I direct the 1st respondent to release the goods and vehicle covered by Ext.P6 notice, to the petitioner, subject to the petitioner furnishing a simple bond without sureties for the security deposit demanded in Ext.P6 notice, before the 1st respondent.

(iii) 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.

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

Sd/
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/