

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 30TH OCTOBER 2009 / 8TH KARTHIKA 1931

WP(C).No. 30959 of 2009(L)

PETITIONER(S):

**M/S. AKBAR TIMBERS,
KOOTTUPATHA, MUNDUR P.O., PALAKKAD,
REPRESENTED BY PROPRIETOR V.E. MOHAMMED RAFL.**

BY ADV. SRI.M.C.JOHN

RESPONDENT(S):

**THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR.**

BY GOVT. PLEADER SRI. C.K. GOVINDAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/10/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

C.K. ABDUL REHIM, J

W.P.(C)No. 30959 of 2009

Dated this the 30th day of October, 2009

J U D G M E N T

1. Petitioner is aggrieved by detention of transport of timber effected on the basis of inter state sale. According to the petitioner the consignment detained contained only waste pieces and cuttings of timber usable only for making small articles such as, switch board, plug, ceiling cross, base for electrical shades etc. The transport was accompanied by Form No.15 Delivery Note and Tax Invoice, as per Exts.P1 & P2 . The value shown in the documents is Rs.94,578/- and tax had already been collected on the basis of such valuation.

2. Ext.P3 is the notice of detention issued under Section 47 (2) of the Kerala Value Added Tax Act, 2003 (KVAT Act). The reason for detention stated therein is that the goods under transport are not waste and on physical verification it is found that the goods are finished and sized

timber. Therefore the respondent had estimated the value at Rs.1,60,500/- and double the amount of tax due on the value is demanded along with Cess as Security Deposit for permitting release of the goods.

3. Heard counsel appearing for the petitioner and Government Pleader appearing for the respondent. Having considered the allegations for detention, I am of the opinion that the question whether there was any attempt at evasion of payment of tax is the matter which can be decided only on finalisation of adjudication under Section 47. However continued detention is not warranted till such finalisation. Considering the fact that the petitioner is a registered dealer and that the goods under transport is a notified item, I am of the opinion that release can be permitted ensuring adequate security measures.

4. In the result the writ petition is disposed of directing the respondent to release the goods along with the vehicle detained under Ext.P3 notice, on condition of the petitioner remitting 50% of the amount of Security Deposit

demanded under Ext.P3 towards advance tax, without prejudice to finalisation of the proceedings under Section 47 and without prejudice to imposition of penalty if found ultimately liable. The petitioner shall also furnish Security Bond in the form prescribed under KVAT Rules, without sureties, for the amount demanded under Ext.P3.

5. The competent authority under Section 47 (5) & (6) is hereby directed to expedite the adjudication proceedings and to finalise the same, after affording an opportunity to the petitioner, as early as possible at any rate within a period of two months from the date of release of the goods.

C.K. ABDUL REHIM
JUDGE

shg/