
(2009) 08 KL CK 0008

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 19930 of 2008 (V) and 17708, 19595, 19667, 19669, 19720, 19787, 19830, 19930, 20241, 20368, 21648, 21649, 21833, 21920, 21923, 21939, 22587, 24162, 24163, 24875, 25739, 28095, 29310, 29515, 29565, 30531 and 33850 of 2008

KMP Timbers

APPELLANT

Vs

Commercial Tax Inspector and Another

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Income Tax Act, 1961 — Section 119

Kerala Value Added Tax Act, 2003 — Section 19A, 2, 21, 24, 25

Kerala Value Added Tax Rules, 2005 — Rule 21A, 21A(1), 21A(2), 67(7)

Citation : (2010) 27 VST 536

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Bobby John and P.N. Damodaran Namboodiri, for the Appellant; V.K. Shamsudheen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The common issue involved in all these cases is whether the Commissioner is authorised to issue the impugned circulars fixing the "minimum sale price" for calculating the advance tax realisable u/s 47(16A) of the Kerala Value Added Tax Act, 2003 and if it is within the power and competence of the Commissioner, whether the sale price fixed in respect of "live chicken" as involved in W.P. (C) No. 17708 of 2008 and that of "timber" involved in other cases is based on the actual market value and legally reckonable, for quantifying the advance tax.

2. The minimum factual position for adjudication of the cases is as follows:

The "live chicken" brought by the petitioner in W.P. (C) No. 17708 of 2008, stated as purchased for an invoice value of Rs. 29 per kg. from Tamil Nadu, was intercepted by the concerned respondents at the check-post insisting that the

goods could be transported only if advance tax was remitted reckoning the value at the rate of Rs. 60 per kg. as notified by the Commissioner. The goods as well as the vehicle were ordered to be released, pursuant to the interim order passed by this court on June 13, 2008, on condition that the petitioner remitted advance tax on the price provisionally fixed as Rs. 60 per kg. making it clear that the payment will be subject to the result of the writ petition.

3. In all the other cases, "timber" of different types has been brought into the State as imported from abroad and otherwise. When the vehicles were intercepted at different places/check-posts insisting for payment of advance tax as contemplated u/s 47(16A) of the Act on the minimum sale price notified by the Commissioner as per circular No. 28/08 dated June 19, 2008, the power, competence and jurisdiction of the Commissioner to issue such circular and as to the sustainability of the sale price fixed therein, have been subjected to challenge, seeking for appropriate reliefs. The vehicles and the goods have been released pursuant to the interim orders directing payment of advance tax reckoning the "provisional sale price" as ordered by this court.

4. The learned Counsel for the petitioner in W.P. (C) No. 17708 of 2008 submits that the price of "live chicken" fixed by the Commissioner as per exhibit P4 circular at Rs. 60 per kg. is exorbitant and it does not have any nexus with the market price. It is also pointed out that the price of "live chicken" varies from place to place and from day to day, as evident from exhibit P2 notification published by the Tamil Nadu Poultry Farmers' Association in various dailies, which shows that the maximum rate even as on May 25, 2008 was only Rs. 30 per kg. The price is very much liable to be fluctuated depending upon the "demand-supply" ratio, festival season and adverse calamities including "bird flu" and this being the position, there is absolutely no rationale in fixing the sale price of "live chicken" as Rs. 60 per kg. and in realising the advance tax at that rate, much prior to the taxable event when the sale may take place for a far lesser price, contends the learned counsel.

5. The learned Counsel for the petitioners in other cases contended that the "timber" being imported is not of standard quality; the prime consumers are persons having lesser income and that the price of such timber even otherwise cannot have a uniform rate, particularly since the price of timber depends upon the quality of timber, size, girth, absence of any holes or hollows, twist/turns, colour and several other vital factors. It is also pointed out that such timber is considered and valued by the authorities of customs in connection with the imposition of the prescribed duties, based on the "invoice value" and as such, fixation of the sale price by the Commissioner, as per the impugned circular, ignoring the invoice value and the actual expenses incurred, is thoroughly wrong and illogical. As per the impugned circular, the Commissioner has obviously adopted a uniform figure without any regard to the nature of timber and the actual market value, which, hence is stated as wrong and unsustainable.

6. Mr. Mayankutty Mather, the learned Counsel for the petitioner in W.P. (C) No.

17708 of 2008, submits that the live chicken, by virtue of the very nature of the goods/commodity, are highly fragile/perishable in nature and the petitioner will not be in a position to have the goods detained for long, on interception by the Departmental authorities. Considering the mortality rate and imminent danger sustaining serious loss because of the delay, if any, persons like the petitioner are constrained to meet the demand put forth by the Departmental authorities, who extract huge amounts towards advance tax, u/s 47(16A) of the Act, merely because of their higher bargaining power and without any regard to the actual market price. It is stated that such petitioners are confronted with a "do or die" battle and that there is no other alternative for them but to succumb to the pressure tactics applied by the officers. Even if the authorities at the check-post are satisfied over the actual price paid by the petitioners, they are virtually prevented from collecting the actual tax payable, in view of the impugned circular issued by the Commissioner stating that such advance tax has to be collected on the basis of the higher sale price fixed in the circular.

7. The learned Counsel submits that the term "sale price" is defined u/s 2(xliv) of the VAT Act. Connecting the same to the term "turnover" as defined u/s 2(lii) and also Section 6 providing for levy and the provision for self-assessment u/s 21, "audit assessment" u/s 24 and "assessment of the escaped turnover" u/s 25, the learned Counsel submits that the tax is to be assessed on the basis of the "sale price/purchase price" as the case may be and not on the basis of any "saleable price". The absence of power of the concerned authority to fix the sale price is also sought to be asserted referring to the dictum in *Rijo Jacob v. Commissioner of Commercial Taxes* [2000] 8 KTR 505 (Ker) and in *State of Rajasthan v. Rajasthan Taxation Tribunal* [2002] 127 STC 137 (Raj). The learned Counsel further submits that the power of the Commissioner u/s 3 of the VAT Act is only with regard to the "administrative affairs" and superintendence over the officers, which does not enable the Commissioner to have any legislative power for issuing the circular fixing the sale price and places reliance on the decisions in *E.K. Hajee Mohammed Meera Sahib & Sons v. Sales Tax Officer* [1992] 86 STC 99 (Ker) : [1991] 1 KLT 896 and *P.T. Enterprises v. Commissioner of Sales Tax, M.P.* [1995] 96 STC 434 (MP) as well, in support of the contentions raised.

8. Dr. K.B. Muhammedkutty, learned senior Counsel appearing for the petitioners in W.P. (C) No. 19830 of 2008 and connected cases, submits that the value of timber fixed by the Commissioner as per the impugned circular is almost double the actual price, as reflected from the invoice. The actual price of timber, particularly in view of the poor quality, lower girth, lesser colour and such other defects is correctly shown in the invoice and such true state of affairs is supported by the necessary bills of entry, bills of lading, delivery notes, etc. It is also stated that there cannot be any unbridled power for the Commissioner to fix the sale price ignoring the actual facts and figures and that the authorities by virtue of Section 47(16A) of the Act only to impose/collect advance tax and not to fix any sale price and compute the tax on such imaginary value. The learned Counsel further submits that even though the circular No. 50/2006 dated

December 18, 2006 and circular No. 53/2006 dated December 22, 2006 have been upheld by this court, simultaneously upholding the constitutional validity of Section 47(16A), as per the decision in Fantasy Sales Corporation Vs. Sales Tax Inspector and Others, , the said decision is not enough to hold that the Commissioner is having power to issue circulars fixing the sale price, for the purpose of realising the advance tax. It is also brought to the notice of this court that the value of the commodity is having nexus with the charge/levy u/s 6 of the Act and as such, the value is to be decided by the assessing authority and not by the Commissioner, particularly, since the essential legislative power, which is conferred on the Government cannot be delegated to the Commissioner in this regard. The learned senior Counsel asserts that the power u/s 3(2)(c) of the Act is only with regard to the administrative affairs, which, even by the farthest stretch of imagination, can never be pressed into service for fixing the "sale price" in view of the dictum in Choice Plywood Industries Vs. State of Kerala, . This is also sought to be supported in the light of the observations made by the apex court in State of Kerala v. Travancore Chemicals and Manufacturing Co. [1999] 112 STC 191 Ker : [1999] 1 KLT 91, where a provision was set aside, holding that the same conferred unbridled power on the Government, which is stated as squarely applicable to the cases in hand as well and the only difference is that such unbridled power is now vested with the Commissioner.

9. Mr. Premjit Nagendran, the learned Counsel appearing for the petitioner in W.P. (C) No. 19669 of 2008 and connected cases, submits that fixation of the sale price even before the taxable event was brought in by the Government in connection with the steps for realising the "entry tax" under the relevant provisions of the Tax on Entry of Goods into Local Areas Act. As per the circular No. 41/2006 dated November 20, 2006, the Government had fixed the sale price of various timber imported from abroad for the fixation of "entry tax", also after considering the request/suggestion of the All Kerala Timber Importers Association. Shortly thereafter, the enactment was set aside by this court as per the decision reported in Thressiamma L. Chirayil Vs. State of Kerala, . To overcome the situation, the "entry tax" set aside by this court is stated as brought back in the form of "advance tax", incorporating Sub-section (16A) to Section 47 of the VAT Act and followed by circular No. 50/2006 dated December 18, 2006 fixing the rate of tax in respect of various items mentioned therein, including "timber", "live chicken", etc., and later clarified by circular No. 53/2006 dated December 22, 2006. The learned Counsel submits that no analogy can be drawn to the fixation of the floor price to paddy/rice as the same in respect of paddy/rice is fixed by the State, where the State itself comes up as a "willing purchaser" to procure paddy; whereas the position is different in the case of "timber" and further that fixation of value does not take its origin from entry 54 of List II (State List) in the Seventh Schedule to the Constitution of India. Referring to exhibit P10 series of documents produced along with I.A. No. 11301 of 2008 in W.P. (C) No. 19669 of 2008, the learned Counsel submits that the "teak" logs belonging to the Forest Department of the Government of Kerala

have been sold at a much lesser price as discernible therefrom and hence that fixation of the sale price by the Commissioner as per the circular No. 28/2008 dated June 19, 2008 is absolutely without any rhyme or reason.

10. Mr. Bobby John, appearing for the petitioner in W.P. (C) No. 19787 of 2008 and connected cases submits that the Commissioner cannot issue any circular contrary to the provisions in the Act and contends that the impugned circular is against the mandate u/s 47(2), which is more or less identical to the stipulation u/s 119 of the Income Tax Act. Reliance is sought to be placed on the decisions rendered by the apex court in *Sirpur Paper Mills Ltd. Vs. The Commissioner of Wealth Tax, Hyderabad*, and *Jalgaon District Central Co-operative Bank Ltd. and Another Vs. Union of India (UOI) and Others*, as well. Fixation of the market value by the Commissioner is stated as wrong and unsustainable, referring to the law declared by the apex court in *State of Punjab and Others Vs. Mohabir Singh etc. etc.*, . The learned Counsel also submits that the tax is liable to be paid on the actual sale price and not on the probable price obtainable in future, placing reliance on the decision rendered by the apex court in *State of Rajasthan and Another Vs. Rajasthan Chemists Association*, .

11. While mutually supporting the contentions raised by the petitioners in different cases, all the learned Counsel appearing for the petitioners submit that, though sustainability of the power to issue circulars demanding "advance tax" can be justified (which position is not conceded in view of the challenge raised against the judgment in *Fantasy Sales Corporation Vs. Sales Tax Inspector and Others*, and pendency of the writ appeal involving the constitutional validity of Section 47(16A)), no such power can be stated as conferred on the Commissioner to issue any circulars fixing the "sale price", whether it be for "live chicken" or for "timber" or for some other commodities. It is also the common contention of all the petitioners that there is no specific provision in the VAT Act or Rules in respect of any "under-valuation" and if the Departmental authorities are not satisfied with the value declared in the documents, the goods could very well be purchased by the Department, offering a price ten per cent above the rate shown and in the manner as specified in Section 45 of the KVAT Act. It is also pointed out that the petitioners have no objection whatsoever in exercising the said power and that the petitioners had actually suggested the said course when the goods and the vehicles were intercepted, which however was not acceptable to the departmental authorities.

12. Mr. V.K. Shamsuddeen, the learned Government Pleader appearing for the respondents, submits that Section 47(16A) providing for collection of advance tax was incorporated in the statute, by virtue of the power derived from entry 54 in List II of the Seventh Schedule to the Constitution of India. It is by invoking the power u/s 47(16A), read with power u/s 3(2)(c) of the Act, that the Commissioner has chosen to issue the relevant circular, which, hence is very much within the four walls of the law. The learned Government Pleader further submits that the constitutional validity of Section 47(16A) and the validity of the

circulars 50/2006 and 53/2006 having been upheld by this court as per the decision rendered in *Fantasy Sales Corporation Vs. Sales Tax Inspector and Others*, , it is no more open to contend that the Commissioner cannot issue the impugned circular for giving effect to the provisions of the Act, in the matter of collecting "advance tax" as provided u/s 47(16A) of the Act, stipulating the manner in which such tax is to be collected. It is also pointed out by the learned Government Pleader that the actual extent of tax is to be decided by the "assessing authority", in the course of assessment proceedings and that the assessing authority or the appellate authority, while exercising such jurisdiction, is not bound by the price shown by the Commissioner in the concerned circular. This is more obvious from the circular No. 53/2006 issued by the Commissioner himself, modifying the course stipulated in circular No. 50/2006, catering to the convenience of the dealers. The purpose behind the legislation, particularly when Section 47(16A) was brought into existence, providing for collection of advance tax in respect of "evasion prone commodities" to be specified by the Commissioner is sought to be highlighted, asserting that the Commissioner is having all incidental powers for implementing the mandate under the statute with intent to prevent the evasion of tax.

13. As observed hereinbefore, the constitutional validity of Section 47(16A) was considered and dealt with in detail by this court in *Fantasy Sales Corporation v. Sales Tax Inspector*, Walayar [2007] 7 VST 323 : [2007] 2 KLT 174 where the validity of the provision was upheld. Placing reliance on the decision rendered by the apex court on *State of Rajasthan and Another Vs. Rajasthan Chemists Association*, , it was observed by this court that the "taxable event" is of course the sale of the goods and that the actual sale price alone can be the basis for levying the tax. It was also observed that in the said case, there was no exception to the taxable event, namely, the sale and that the actual tax could be assessed only after the sale takes place and that too, based on the sale price. But in the case of "evasion prone goods", since it was difficult to trace the goods and in some cases, the dealer as well, once they cross the border, necessary safeguards were brought in, by providing for collection of "advance tax" and it was accordingly, that the enabling provision Section 47(16A) of the Act and the relevant circulars, viz., 50/2006 and 53/2006 were held as valid and unassailable, pointing out that the decision of the apex court in *State of Rajasthan and Another Vs. Rajasthan Chemists Association*, does not stand in the way of collection of "advance tax" and further that the enactment of such provision was constitutionally permissible in view of the decision of the apex court in *State of West Bengal and Another Vs. E.I.T.A. India Ltd. and Others*, .

14. The observations made by this court in *Fantasy Sales Corporation v. Sales Tax Inspector*, Walayar [2007] 7 VST 323 : [2007] 2 KLT 174 show that, going by the scheme of the KVAT Act and Rules, only those goods which can be subjected to tax under the VAT Act can be notified u/s 47(16A) of the Act and hence if any particular type of goods which is not "evasion prone" is also included in the notification, the concerned parties are at liberty to challenge the same. It has

also been observed that the Legislature cannot be blamed for not naming the "evasion-prone goods", as their list may change from time to time; holding it further that the contention of the petitioners that there was excessive delegation of power on the Commissioner cannot be accepted. Applying the very same logic and reasoning, it has to be held that the fixation of the "sale price" as given in the impugned circular is only "provisional", for the purpose of collection of "advance tax" alone and that the parties are at liberty to prove the actual facts and figures before the assessing authority; upon which, the actual tax payable will be determined based on the actual sale price and the parties will be entitled to get refund or set-off, as the case may be. Almost all the decisions cited before this court appear to have been cited by the learned Counsel while moulding the case in *Fantasy Sales Corporation Vs. Sales Tax Inspector and Others*, ; the scope and applicability of which have been discussed in detail therein and hence do not require to be re-stated/re-appreciated, except to the extent as dealt with herein. This being the position, the challenge raised against the power, competence and jurisdiction of the Commissioner fixing the "provisional sale price" in the circular, which is also stated as on the basis of proper market study, cannot be sustained at all.

15. It is to be noted that, by demanding the tax in advance, the State does not impose or levy any tax, which the State is not competent to levy. The attempt is only a measure to prevent evasion of tax, which the State is legitimately entitled to collect. It is never an attempt to tax the inter-State sale and free flow of goods is also not prevented by demanding tax in advance. As observed by this court in *Fantasy Sales Corporation v. Sales Tax Inspector, Walayar* [2007] 7 VST 323 : [2007] 2 KLT 174, if some inconvenience is caused at the check-post, it cannot be described as violation of the rights conferred under the Constitution of India. Viewed in this background and giving a purposive interpretation, the object of fixation of provisional sale price in the circular is to have uniformity in the application of law by all concerned and to have clarity with regard to the extent of advance tax to be collected, as provided.

16. The scope of fixation of sale price in the circular is also very much discernible from the contents of the different circulars produced, which clearly stipulate that, if the tax is got assessed by the assessing authority, the dealers can have necessary certificates and can cross the check-post on the basis of such certificates. This is evident from a plain reading of the circular No. 53/2006 dated December 22, 2006. As per the circular No. 50/2006, instructions were issued for collection of advance tax in respect of the specified "evasion prone commodities" at the entry points into the State such as check-posts, ports, airports and railway stations. But when difficulties experienced by the dealers in remitting the tax at the entry points in respect of their consignments, especially where the entry point was far away from the ordinary place of business, were brought to the notice of the Commissioner, suggestion was made to permit the dealers to remit the tax before the concerned "assessing authority". It was accordingly that the said circular, viz., 53 of 2006 was issued, permitting the dealers to remit the tax

on the consignment in advance, before the respective assessing authority, if they could provide details of the consignment; such as copy of the bill/invoice, vehicle number and name of the entry point (check-post/port/airport/railway station). It was further stipulated therein that, while estimating the sale price for the purpose of collecting the advance tax, the assessing authority shall consider the value as disclosed in the invoice/bill, transporting charges and an estimated gross profit at five per cent. On assessing the advance tax as above, the assessing authority has to issue a certificate specifying the particulars mentioned in the circular and the certificate might be delivered in original or faxed to the entry point, at the option of the dealer: stipulating further that the check-post authorities shall accept such certificates and permit the consignments to be transported after satisfying the genuineness of the certificate with reference to the consignment. The said circular also points out the necessity to maintain the relevant registers by the "assessing authority" as well as the "check-post authorities" in this regard.

17. In the earlier circular, 50/2006 dated December 18, 2006 providing for collection of advance tax on "evasion prone items", on the basis of the estimated sales turnover to be collected at the check-post, it was stipulated that while estimating the sale value, guidelines already circulated for valuation of items such as chicken, timber, etc., shall be followed. It was further stipulated that the dealers, who paid advance tax at the entry point, as above, can adjust the said amount against the output tax due for the month while filing return for the respective return period. This by itself shows that, it was at the option of the dealers; either to have paid advance tax at the check-post/entry point on the basis of the estimated sales turnover fixed on the basis of the guidelines issued, with liberty to have it adjusted against the output tax due for the month while filing return for the respective period or to remit the tax before the concerned "assessing authority" on the basis of the actual value as disclosed in the invoice/bill, transporting charges and such other heads as mentioned in the circular No. 53/2006, obtaining necessary certificates in this regard, to cross the border. To put it more clear, the chance for evasion of the concerned commodities, when the proceedings are pursued before the "assessing authority", enabling to obtain a "certificate" is rather too low, if not nil, particularly since the "assessing authority" very much knows the "dealer", on the basis of the relevant records. Unlike this, in the case of the proceedings at the entry point/check-post, the check-post authorities cannot identify the dealer and there may be circumstances when the goods are brought in even by unregistered dealers, under which circumstances, the chance for evasion of tax in respect of "evasion prone items" is much more, which can be remedied only by stipulating for collection of tax on the basis of the estimated turnover, based on the sale price of the concerned commodities fixed by the Commissioner, after conducting market study. Since validity of the both the above circulars, viz., 50/06 and 53/06 has already been upheld by this court vide the decision in *Fantasy Sales Corporation v. Sales Tax Inspector* [2007] 7 VST 323 : [2007] 2 KLT 174, the course pursued by the

Commissioner by issuing the impugned circulars stipulating the sale price in respect of the concerned commodities on a provisional basis, solely for collection of advance tax at the check-post/entry point, cannot be stated as arbitrary, illegal or beyond the power and competence, to take it outside the purview of the power derived from Section 47(16A), read with Section 3(2)(c) and Rule 67(7) (a).

18. The contention of the petitioners that the Departmental authorities could have purchased the goods, if the value shown in the invoice was much below the actual price, by invoking the power u/s 45 of the Act and paying the price by ten per cent more than the invoice price as stipulated therein, particularly in view of the willingness expressed in this regard does not appear to be having any pith or substance. Obviously, Section 45 is an "enabling provision" and it does not bind the Government or the Departmental authorities to purchase all such items brought in by the dealers, following the course stipulated thereunder. This is more so, since the goods are not brought in to cater to the requirements of the State/Department and that the State/Department is not doing any business, dealing with the commodity in its day-to-day affairs. In so far as the State/Department is concerned, the interest and concern is only to protect the revenue and to prevent evasion of tax in respect of the transactions pursued by the dealers and it is only to give "tooth and nail" to the said exercise, that the power to purchase the goods, if any "under-valuation" is doubted, is conferred u/s 45 of the Act. The idea and understanding of the petitioners to the contrary is quite wrong and misconceived.

19. It is very much relevant to note that Section 47(16A), which was brought into effect from July 1, 2006 by virtue of the Kerala Finance Act, 2006, starts with a "non obstante clause". By virtue of the terminology used in the provision, paramount importance is given to the necessity to prevent any "evasion of tax" and it is with this intent that the power flowing therefrom is consciously conferred on the Commissioner. The above power coupled with the power u/s 3(2)(c), enables the Commissioner to issue appropriate orders, instructions and directions to the officers and persons as he deems fit, for the proper administration of the Act. This being the position, the fixation of the "sale price" by the Commissioner, to have a uniform application, in the course of the proceedings pursued by the officers under him, while calculating the estimated sale price for collecting the advance tax at the check-post/entry point, is very much within the four walls of the law and cannot be assailed under any circumstances, especially when the dealers are provided with an alternative course to have actual assessment at the hands of the "assessing authority" and to secure a certificate to cross the border as provided in circular 53/06, validity of which circular has been upheld by this court in *Fantasy Sales Corporation v. Sales Tax Inspector* [2007] 7 VST 323 : [2007] 2 KLT 174. This is more so, when fixation of the sale price by the Commissioner is after a market study, as stated in paragraph 5 of the counter-affidavit and further that the dealers can very well claim the refund, if they sell the commodities for a lesser price and file necessary

return. Even otherwise, the dealers need not wait till the sale of the commodities materialises, as the advance tax paid can very well be adjusted/set off against the output tax to be paid along with the filing of the return in respect of the transaction in the very same month. The alleged loss, hardships and apprehension projected to the contrary are quite wrong and unfounded.

20. In this context, it is also very much relevant to note that Section 19A of the KVAT Act (which came into effect from July 1, 2006 as per the Kerala Finance Act, 2006) provides for issuance of "green card", which is extracted below for the purpose of convenience:

19A. Issue of green card.- Every registered dealer satisfying the criteria, as may be prescribed, may be issued a green card for such speeding up clearances of his consignments at the check-posts and such other purposes as may be prescribed.

21. The possession of a green card by a dealer enables clearance of his consignments at the check-post within two hours, also providing exemption from the liability to pay any "advance tax" as stipulated under Rule 21A(2)(a) and if), respectively. Rule 21A, brought into effect from April 28, 2007, specifying the norms for issuing the green cards and the facilities conferred on the green card holder, is extracted below. Rule 21A:

(1) Every dealer satisfying the following criteria may be issued green cards by the Commissioner of Commercial Taxes u/s 19A of the Act, namely:

(a) Dealers with annual net tax remittance of minimum rupees fifty lakhs in the previous financial year.

(b) Dealers who have filed all returns in time without incurring any delay for the previous year.

(c) Dealers who have submitted their statutory form like delivery notes and F form within the stipulated period for the previous year.

(d) Dealers who have not been penalized by the Commercial Taxes Department for any offence for the previous three years.

(2) Every green card holder shall be entitled to the following facilities, namely:

(a) Clearance of all their consignments at all check-posts within two hours.

(b) Priority in issue of statutory forms like Delivery Note, C Form, F Form.

(c) Grant of statutory forms like Delivery Note, C form, F form and salesman permit in one hour of application.

(d) Grant of Branch Registration in one day within the same district and within three days in areas outside the district where the principal office is situate.

(e) Grant of value added tax refund without pre-audit.

(f) Exemption from collection of advance tax.

(3) The green card shall be valid for a period of one year.

(4) The green card shall be invalidated, on penalizing the green card holder for violation of any provisions under the Kerala General Sales Tax Act, 1963, Kerala Value Added Tax Act, 2003 or the Central Sales Tax Act, 1956.

(5) The dealers who qualify the requirements under Sub-rule (1) may file application for getting green cards in form No. 46, in duplicate, to the Commissioner through the assessing authority, duly recommended by the concerned Deputy Commissioner.

22. From the above, it is clear, that every bona fide dealer, who is promptly submitting the returns every month as specified, is entitled to obtain the green cards and on such an event, there is absolutely no liability to pay any advance tax at the check-post for clearing his goods. The petitioners herein, having an opportunity to obtain necessary "green cards" as contemplated u/s 19A, read with Rule 21A and thus to cross the check-post/border without any necessity to pay the advance tax or else to remit the advance tax as assessed by the assessing authority on the basis of the invoice/bill price + transportation charges and other amounts as specified in circular No. 53/06, it can never be said that the petitioners are left with "no remedy" because of the fixation of the sale price by the Commissioner vide the impugned circular 28/08 dated June 19, 2008. The contention raised in this regard miserably fails and it is only to be rejected.

23. In the above facts and circumstances, all the contentions raised by the petitioners against the impugned circulars fixing the "sale price" of "live chicken" and "timber" (exhibit P4 circular/order No. C1-70910/04CT dated May 15, 2008 in W.P. (C) No. 17708 of 2008 and circular No. 28/2008 dated June 19, 2008 in other cases) are devoid of any merit. The challenge against the above circular/order fails and the validity is upheld as not assailable. Interference is declined and all the writ petitions are dismissed accordingly.