

No.C1-12598/12

Office of the Commissioner of
Commercial Taxes
Thiruvananthapuram
Dtd.15 / 04 / 2013

CIRCULAR No.05 / 2013

Sub:- KVAT Act, 2003 - Sec.47(4) - Default of payment of tax -
Updating check-post officials about tax arrears - Detainment of
goods transported instructions issued - reg.

Ref:- Judgment of Hon'ble High Court dtd.14-02-2012 in
W.A.No.260/12 and WPC Nos.4226, 4228, 4238 and 4239 of 2012

The capital goods brought by the appellant in writ appeal cited above for installation in the factory was detained at the check-post on allegation of attempted evasion of tax. Another ground in support of the detention stated in the notice was that the appellant was in arrears of tax for which goods are detained under Sec.47(4) of KVAT Act.

In Writ Appeal referred above, the appellant contended that Section 47(4) of the KVAT Act does not authorize the recovery of arrears of tax by detaining the goods transported by defaulter who owe substantial amount of tax to the department.

Sub-section 4 of Section 47 is extracted under:

"If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, notwithstanding anything to the contrary contained in this Act or the

rules made there under allow the goods to be transported after realizing the tax is respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained by such officer and shall be dealt within the manner provided in this Section as if the transport of goods were an attempt to evade payment of tax due under this Act.”

Hon’ble High Court has held that the detention of goods under Section 47(4) is perfectly in order. The Court observed as follows:

“We feel in order to make Section 47(4) more workable and effective, the Assessing Officers in the State should keep on updating the check post officials about the tax arrears of dealers so that as and when goods are transported by defaulters their goods under transport are detained and released only on clearance of arrears of tax, recovery of which is not stayed by any authority or Court or on such dealer making arrangements for timely payment of arrears of tax to the satisfaction of the Department.”

Attention of all officers is invited to the above observation made by the Hon’ble High Court and is directed to be vigilant in the transactions of dealers who are in tax arrears.

In cases where assessing authority finds that goods of a dealer shall not be allowed to be transported for arrears or cancellation of RC, the intimation shall also be given to the ITMC so that ITMC can alert the check-post authorities.

Sd/-
COMMISSIONER