IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 26408 of 2015 (A)

PETITIONER :

M/S.METRO AGGREGATES AND SAND INDIA PVT. LTD.,
32/2982 B1, SAHRUDAYA BUILDINGS, PONNURUNNI,
VYTILA, COCHIN -682 019, REPRESENTED BY ITS DIRECTOR,
KURIKKAL JOSEPH PAUL, AGED 47 YEARS,
S/O. KURIKKAL VARGHESE JOSEPH, 32/2982 B1,
SAHRUDAYA BUILDINGS, PONNURUNNI, VYTILA,
KOCHIN- 682 019

BY ADVS.SMT.R.LEELA
SMT.P.I.SHAMLATH
SMT.U.S.SARITHA

RESPONDENT(S):

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1. STATE OF KERALA,
   REPRESENTED BY COMMISSIONER OF COMMERCIAL TAXES,
   DEPARTMENT OF COMMERCIALT AXES,
   THIRUVANANTHAPRUAM- 695 001

2. COMMERCIAL TAX OFFICER,
   WORKS CONTRACT, CLAS TOWERS -2ND FLOOR,
   OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHIN- 18

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

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

sts

WP(C).No. 26408 of 2015 (A)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	**THE TRUE COPY OF THE LETTER DATED 6/6/2015**
EXHIBIT P2	**THE TRUE COPY OF THE MOVEMENT PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY**
EXHIBIT P3	**THE TRUE COPY OF THE LETTER DATED 10/7/2015**
EXHIBIT P4	**THE TRUE COPY OF THE LETTER DATED 25/8/15**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26408 of 2015

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Dated this the 9th day of September, 2015

JUDGMENT

The petitioner is a private limited company engaged in the conduct of a crusher unit, from where it sells sand and metal. For the assessment year 2015-16, the petitioner had opted for payment of tax on compounded basis as contemplated under Section 8(b) of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act"). It is the case of the petitioner that although, he applied for payment of tax on compounding basis, the petitioner could not carry on business during period from April to June 2015, since the Government had directed a closure of the unit. Accordingly, the petitioner found himself in a position, whereby he had opted to pay tax under the KVAT Act on compounding basis, while he did not have any turnover that would attract a levy of tax. Faced with the said situation, the petitioner preferred a representation before the 2nd respondent to permit the petitioner to file nil return and discharge his tax liability in accordance with the said return. The respondents did not, however, permit the petitioner to do so, since the petitioner had opted for payment of tax on compounding basis where the tax liability was fixed at Rs.9,62,500/- per month and Rs.28,87,500/- for the year in question. It is aggrieved by the said action of the respondents that the petitioner has come before this Court through the present writ petition.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the plea of the petitioner in this writ petition is essentially for a permission to allow the petitioner to wriggle out of the contract entered into with the Government. The issue with regard to whether a person, who has opted to pay tax on compounded basis under the KVAT Act, can subsequently withdraw from the same unilaterally has already been decided through a host of decisions of this Court as well as the Hon'ble Supreme Court. The decisions are unambiguous when they state that a person who has opted for payment of tax on compounding basis cannot opt out of the scheme unilaterally. An option exercised under the scheme of compounding brings into existence a contract between the assessee and the State, from which neither party can resile. Thus, I find that the prayer sought for in the writ petition cannot be granted. The writ petition therefore fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das