IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 30537 of 2015 ()

PETITIONER(S):

NIZAMUDEEN, MANAGING DIRECTOR,
THOPPIL CONTRACTORS (INDIA) PRIVATE LIMITED,
THOPPIL BUILDINGS, THOLIKUZHI,
ADAYAMON P.O., KILIMANOOR,
THIRUVANANTHAPURAM-695 614.

BY ADV. SRI.AJITH KRISHNAN.

RESPONDENT(S):
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1. THE DEPUTY COMMISSIONER,
   WORKS CONTRACT, COMMERCIAL TAXES,
   TAX TOWER, 2ND FLOOR, KARAMANA,
   THIRUVANANTHAPURAM-2.

2. COMMERCIAL TAX OFFICER,
   WORKS CONTRACT, COMMERCIAL TAXES,
   TAX TOWER, 2ND FLOOR, KARAMANA,
   THIRUVANANTHAPURAM-2.

3. ASSISTANT COMMISSIONER,
   WORKS CONTRACT, COMMERCIAL TAXES,
   TAX TOWER, 2ND FLOOR, KARAMANA,
   THIRUVANANTHAPURAM-2.

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 30537 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE CERTIFICATE OF REGISTRATION ISSUED TO THE PETITIONER.

EXT.P2 COPY OF THE LIABILITY CERTIFICATE ISSUED TO THE PETITIONER WITH RESPECT TO THE WORK OF PARAKKALVELANICKAL ROAD, DATED 20/08/2015.

EXT.P3 COPY OF THE LIABILITY CERTIFICATE ISSUED TO THE PETITIONER WITH RESPECT TO THE WORK OF CONSTRUCTION OF BRIDGE AT KOOVAKUDY ACROSS KARAMANA RIVER, DATED 20/08/2015.

EXT.P4 COPY OF THE LIABILITY CERTIFICATE ISSUED TO THE PETITIONER WITH RESPECT TO THE WORK OF KATTUPUTHUSSERY NAVAIKULAM TUMBODE KAITHOE ROAD, DATED 20/08/2015.

EXT.P5 COPY OF THE LIABILITY CERTIFICATE ISSUED TO THE PETITIONER WITH RESPECT TO THE WORK OF CHARUMMOODU-AYYAPPANKUZHY VIA. NALLIKUZHY PARUTHYKUZHY, DATED 20/08/2015.

EXT.P6 COPY OF THE LIABILITY CERTIFICATE ISSUED TO THE PETITIONER WITH RESPECT TO THE WORK OF CHATHANNUR-PARAVOOR-MANIYANKULAM ROAD, DATED 20/08/2015.

EXT.P7 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 03/09/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 30537 of 2015

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Dated this the 8th day of October, 2015

JUDGMENT

The petitioner is a dealer registered with Commercial Taxes Department, Government of Kerala, under the Kerala Value Added Tax Act, hereinafter referred to as the “KVAT Act”. He had undertaken certain works for the Kerala State Construction Corporation Ltd., under a sub-contract. The issue that arises for consideration in the writ petition is as regards the rate of tax, that is applicable for payment of tax by the petitioner, at compounded rates. The said issue arises in the context of the deduction made by the awarder of the contract at the time of making payments to the petitioner. It is the case of the petitioner that the awarder of the contract namely, the Kerala State Construction Corporation Ltd., had deducted tax at the rate of 7% while effecting payments to the petitioner. The learned counsel for the petitioner would submit that this deduction is erroneous as, under Section 8 of the KVAT Act, a concessional rate of 5% is contemplated for payment of tax on compounded basis, when the tax is payable in respect of works contract awarded by the Government of Kerala, Kerala Water Authority, or local authorities.

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 it is not in dispute that the contract in the instant case was undertaken by the petitioner for the Kerala State Construction Corporation Ltd., which is a wholly owned Government company. The said fact however, will not entitle the petitioner to claim the concessional rate of tax of 5%, that is envisaged in respect of compounded tax payable by a works contractor in respect of works contract awarded by the Government of Kerala, Kerala Water Authority, or local authority, inasmuch as the Kerala State Construction Corporation Ltd., cannot be equated with the Government of Kerala for the purposes of the concessional rate of tax. It is trite that an exemption provision in a fiscal statute has to be strictly construed against an assessee and when so construed, the concession envisaged in the instant case cannot be extended to Government Companies. Thus, I see no reason to interfere with Exts.P2 to P6 liability certificates issued in relation to the works undertaken by the petitioner. The writ petition in its challenge against the deduction of tax at 7% therefore fails and is accordingly, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das 08.10.15