IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 34628 of 2014 (C)

PETITIONER :

FIVE STAR METALS (P) LIMITED, AGED 39 YEARS,
X11-450, CHEMMANINKADU , PALLAVUR POST,
PALAKKAD DISTRICT, PIN 678 688
REPRESENTED BY ITS MANAGING DIRECTOR, A.G.MADHAVAN

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS :
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1. THE ASSISTANT COMMISSIONER,
(ASSESSMENT), SPECIAL CIRCLE
DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD, PIN 678 001.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
DEPARTMENT OF COMMERCIAL TAXES ,
THIRUVANANTHAPURAM - PIN 695 010

3. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN 695 001.

BY GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 34628 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE PERMISSION GRANTED BY THE IST RESPONDENT FOR PAYMENT OF TAX UNDER COMPOUNDING SCHEME,DATED 11/8/2014.

EXHIBIT P2: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF APRIL 2014.

EXHIBIT P3: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF MAY 2014.

EXHIBIT P4: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF JUNE 2014.

EXHIBIT P5: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF JULY 2014.

EXHIBIT P6: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF AUGUST 2014.

EXHIBIT P7: COPY OF THE MONTHLY RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF SEPTEMBER 2014.

EXHIBIT P8: COPY OF THE INTIMATION RECEIVED BY THE PETITIONER FROM THE PANCHAYAT,DATED 31/3/2014.

EXHIBIT P9: COPY OF DECISION TAKEN BY THE PANCHAYAT COMMITTEE IN THE MEETING HELD ON 21/7/2014.

EXHIBIT P10: COPY OF THE LICENSE ISSUED BY THE PANCHAYAT TO THE PETITIONER DATED 24/10/2014.

EXHIBIT P11: COPY OF THE INTIMATION GIVEN BY THE PETITIONER TO THE IST RESPONDENT DATED 27/10/2014.

EXHIBIT P12: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 30/7/2014.

EXHIBIT P13: COPY OF THE ORDER PASSED AND COMMUNICATED TO THE PETITIONER BY THE 2ND RESPONDENT , DATED 4/9/2014

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 34628 of 2014 (C)

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Dated this the 5th day of January, 2015

JUDGMENT

The petitioner is a metal crusher unit that opted for payment of tax at compounded rates, and sanction was also accorded to the petitioner by the first respondent, by Ext.P1 order passed on the application filed by the petitioner.

2. In the writ petition, the petitioner seeks a proportionate reduction in the tax amount payable as per the compounding scheme, commensurate with a period of seven months during which he could not operate the crusher unit. The assessment year in question is 2014 - 2015 and the petitioner cites various reasons as to why he could not operate the unit for seven months. The grievance of the petitioner is that, although the petitioner had approached the second respondent with a request for granting a proportionate reduction in the tax amount payable under the compounded scheme, the said request was rejected by Ext.P13 order of the second respondent whereby the petitioner was informed that, tax on compounded basis is determined for the whole year and is payable in monthly

installments and that, once the tax amount had been determined on compounded basis, there was no option available to a dealer to withdraw from the said scheme.

3. In the writ petition, the petitioner impugns Ext.P13 order inter alia on the ground that, at the time of exercising the option for payment of tax at compounded rate, the petitioner was not in a position to foresee the difficulties that eventually led to his not operating the crushing unit for seven months.

4. I have heard the learned Government Pleader, who would point out that, a similar matter has already been disposed by this Court by judgment in W.P.(C) No.9055 of 2013, wherein the learned single Judge had taken the view that, the liability of a dealer, who had opted for payment of tax at compounded rate, could not be affected in any manner, by a stop memo that was issued by the Panchayat. She would also point out that, in an appeal preferred against the said judgment of the learned single Judge, a Division Bench by judgment dated 30.05.2013, in W.A. No.729 of 2013 had refused to interfere with the judgment of the learned single

Judge. It is contended that there is no scope for interfering with Ext.P13 order of the second respondent.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, in as much as the petitioner had opted for payment of tax on compounded basis for the assessment year 2014 - 2015, and the application of the petitioner was accepted by the department, the petitioner cannot be permitted to withdraw from the said scheme of payment of tax on compounded basis midway during the assessment year. In taking this view I am fortified by the judgment of the learned single Judge, as also the judgment of the Division bench in the writ appeal, referred to above. I do not see any reason to interfere with Ext.P13 order of the second respondent.

In the result, this writ petition fails, and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/05/01/