IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 35496 of 2015 (J)

PETITIONER:

M/S.PANTHALOOKKARAN GRANITES,
MUNIYATTUKUNNU, P.O.INCHAKUNDU, THRISSUR,
REPRESENTED BY ITS MANAGING PARTNER,
C.A.ASHRAF, S/O. C.M.ABDUL RAHIMAN.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER 2,
COMMERCIAL TAX OFFICE,
IRINJALAKUDA-680125.

2. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, IRINJALAKUDA-680125.

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 35496 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1- TRUE COPY OF QUARRYING LEASE ORDER DATED 21-12-2005 ISSUED TO THE PETITIONER.

EXHIBIT P2- TRUE COPY OF REGISTRATION CERTIFICATE ISSUED TO THE METAL CRUSHER UNIT OF THE PETITIONER 3-4-2014.

EXHIBIT P3- TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER OPTED FOR COMPOUNDED TAX, DT. 13-5-2015.

EXHIBIT P4- TRUE COPY OF INTERIM ORDER PASSED BY THIS HON'BLE COURT IN WPC NO. 3787/2015 DT. 3-6-2015.

EXHIBIT P5- TRUE COPY OF DEFECT NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER DT. 30-9-2015.

EXHIBIT P6- TRUE COPY OF THE PROCEEDINGS DATED 30-9-2015 IMPOSING PENALTY.

EXHIBIT P7- TRUE COPY OF DEMAND NOTICE DT. 11-11-2015 ISSUED BY THE INSPECTING ASSISTANT COMMISSIONER.

EXHIBIT P8- TRUE COPY OF APPLICATION DT. 26-10-2015 FILED BY THE PETITIONER FOR REMITTING THE TAX AT REGULAR RATE.

EXHIBIT P9- TRUE COPY OF THE LETTER DATED 19.8.2015 BY THE PETITIONER, WHICH IS ACKNOWLEDGED BY THE 1ST RESPONDENT ON 20.8.2015.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.35496 of 2015

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Dated this the 22nd day of December, 2015

J U D G M E N T

The petitioner, who is conducting a quarry and crusher unit had opted to pay tax at the compounded rate under Section 8(b) of the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act') for the period 2015-2016. It is the case of the petitioner that, while he had preferred his application for payment of tax at compounded rate, and commenced payment of tax at compounded rate even before the application was accepted and permission granted by the respondents, in June 2015, by virtue of a prohibitory order, the petitioner was constrained to stop his business activities and could not continue with the same. It his case, therefore, that the payment of tax at compounded rates should not be insisted from him for the period subsequent to June 2015.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, the option exercised by the petitioner at the commencement of the assessment year was voluntary and was not a coerced one. For reasons best known to the petitioner, he had opted to pay tax at the compounded rate under Section 8(b) and thereby undertaken to pay tax at a specified rate for the entire year in lieu of the normal procedure for assessment contemplated under Section 6 of the KVAT Act. Having exercised his option to pay tax at compounded rates, and the tax having been paid by the petitioner and accepted by the department, the petitioner cannot wriggle out of his obligations under the KVAT Act. Taking note of the submission of counsel of the petitioner with regard to the difficulties faced on account of the prohibitory order that subsequently came into force, I am of the view that, the petitioner's case requires a lenient consideration. Accordingly, while holding that the petitioner would be liable to pay the tax due in accordance with Section 8(b) of the KVAT Act for the assessment year 2015-2016, I permit the petitioner to discharge the tax liability under Section 8(b) of the KVAT Act on or before

31.03.2016. If the petitioner pays the amount as directed before 31.03.2016, he should be treated as having discharged his liability under Section 8(b) of the KVAT Act for the assessment year 2015-2016. Recovery steps for recovery of the tax amounts from the petitioner on a monthly basis shall be kept in abeyance till 31.03.2016 and the continuance of such action against the petitioner, as also initiation of any penalty proposals against the petitioner, will depend upon the compliance by the petitioner with the directions in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/22.12.15