IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 6481 of 2014 (I)

PETITIONER(S) :

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1. C.T. MARTHA
   W/O.LATE PAVOOTY, 2/359, KUTHOOR HOUSE
   AYYAPATH ROAD, CHOWANNUR-680517, TALAPPILLY TALUK
   THRISSUR DISTRICT.

2. K.P.DAVIS,
   S/O.LATE PAVOOTY, 2/359, KUTHOOR HOUSE
   AYYAPATH ROAD, CHOWANNUR-680517, TALAPPILLY TALUK
   THRISSUR DISTRICT.

3. K.P.PRINCE,
   S/O.LATE PAVOOTY, 2/359, KUTHOOR HOUSE
   AYYAPATH ROAD, CHOWANNUR-680517, TALAPPILLY TALUK
   THRISSUR DISTRICT.

   BY ADV. SMT.S.KARTHIKA

RESPONDENT(S) :

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1. THE STATE OF KERALA
   REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
   REVENUE DEPARTMENT, THIRUVANANTHAPURAM-695 001.

2. THE TAHSILDAR,
   TALAPPILLY TALUK, THRISSUR DISTRICT-680517.

3. REVENUE DIVISIONAL OFFICER,
   THRISSUR-680517.

   R1 TO R33 BY SR. GOVT. PLEADER SRI. R. RANJITH

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 6481 of 2014 (I)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1:	COPY OF THE CERTIFICATE OF REGISTRATION DATED 31.05.2007 ISSUED BY THE COMMERCIAL TAX OFFICER, KUNNAMKULAM TO THE 3RD PETITIONER.
EXT. P2:	COPY OF THE ACKNOWLEDGEMENT DATED 21.01.2008 ISSUED BY THE DISTRICT INDUSTRIES CENTRE, THRISSUR.
EXT. P3:	COPY OF THE LICENSE DATED 22.03.2007 ISSUED FROM THE DEPARTMENT OF FACTORIES AND BOILERS TO THE 3RD PETITIONER.
EXT. P4:	COPY OF THE LICENSE ISSUED FROM THE KUNNAMKULAM MUNICIPALITY TO THE 3RD PETITIONER.
EXT. P5:	COPY OF THE ORDER DATED 02.01.2014.
EXT. P6:	COPY OF THE ORDER DATED 22.01.2014 ISSUED BY THE 2ND RESPONDENT.
EXT. P7:	COPY OF THE NOTICE OF DEMAND.
EXT. P8:	COPY OF THE CHALLAN DATED 18.02.2014 ISSUED BY THE VILLAGE OFFICE, CHOWANNOOR.
EXT. P9:	COPY OF THE APPEAL PREFERRED UNDER SEC.11 OF THE ACT BY THE PETITIONERS.
EXT. P10:	COPIES OF THE POSTAL RECEIPT ISSUED ON 21.02.2014 FOR SENDING EXT.P8 APPEAL AND THE ACKNOWLEDGEMENT CARD RECEIVED FROM THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A. MUHAMED MUSTAQUE, J

W.P.(C).No. 6481 of 2014

Dated this the 06th day of August, 2015

<u>JUDGMENT</u>

The petitioners approached this Court challenging an order passed under Section 3(1)(b) of Kerala Building Tax Act, 1975.

2. The petitioner's claim for exemption in terms of Section 3(1)(b) has been rejected.

3. The petitioner's case is that they are running a book binding activity in the building and the building is constructed for book binding activity. Therefore, it is also submitted that they have factory licence. Ext.P3 is the certificate issued by the competent officers.

4. The Government after adverting to the petitioner's activity has rejected claim for exemption as per Ext. P5 order, stating that even though the petitioners have a licence under the Factories Act, there are no employees as contemplated under Section 2(m) of the Factories Act.

5. The Division Bench of this Court in **<u>State of Kerala Vs. Joseph D. Cunha [2013(4) KLT 279]</u>** held that when the minimum number of employees are not employed in a

factory, establishment cannot be considered as a Factory Act to the extent to the benefit of exemption under Section 3(1)(b).

6. However, the learned counsel for the petitioners point out to the notification issued under Section 85(i) of the Factories Act. Entry 21 in the notification is related to printing, ruling on paper, book binding or composing types including photo composer. The purport of notification is to apply the provisions of the Factories Act notwithstanding the number of persons employed in the factory is less than the number required under Section 2(m) of the Factories Act. Therefore, it is submitted that there is a deeming provision to qualify the activity for limited purpose of the Factories Act.

7. The learned counsel also relied on the Division Bench of this Court in **Chathu Vs. District Labour Officer [2001(1) KLT 147]** wherein it is held that when the Government issued a notification applying the provisions of the Factories Act, those establishment where the manufacturing process relating to printing, ruling on papers or book binding is being carried on, shall also be deemed to be a factory irrespective number of persons employed by the employer. Therefore, it is contended that the petitioners are

entitled for exemption treating the building as a factory.

8. Per contra, the learned Government Pleader submits that even if the petitioners are entitled for the benefit of notification, the petitioners cannot claim that benefit of notification to claim the benefit of exemption under the Building Tax Act. It is further submitted that the petitioners are not doing any manufacturing process or any other activity in the building.

9. The Factories Act is an exhaustive act to determine the activities in a factory. Section 85 of the Act gives the power to the State Government to declare certain premises wherein manufacturing process is carried on as a factory notwithstanding the number of employees are employed. Therefore, in the wisdom of the State, book binding activity has been treated as a factory for the limited purpose of the application of Factories Act. Therefore, having treated book binding activity as an activity which would qualify for application of Factories Act, the State Government in the matter of granting the benefit under the Building Tax Act, cannot contend that it is not a factory to deny the petitioners for the benefit of the exemption. The Government in the impugned order did not advert to this legal aspect. The main

reason pursuaded the Government to decline the claim of exemption is that the petitioners do not have a minimum number of employees as contemplated under Section 2(m).

10. This Court is of the view, by virtue of the deeming provision treating the book binding activity as an activity which would qualify as an activity under the Factories Act, the petitioners are entitled for the benefit of exemption. Accordingly, the impugned order is set aside and it is declared that the petitioners are entitled for the benefit in terms of Section 3(1)(b) and the writ petition is allowed and disposed of as above. Any assessment order raised against the petitioners are also stand set aside.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

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