IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7133 of 2015 (N)

PETITIONER(S) :

GIGI MOL, AGED 41 YEARS, W/O.TONY,
KATTUMATH HOUSE, POST CHENGALOOR,
THRISSUR DISTRICT, PIN-680 312.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S) :

THE DEPUTY LABOUR OFFICER,
BUILDING AND OTHER CONSTRUCTION WELFARE OFFICER,
CIVIL STATION, AYYANTHOLE, THRISSUR DISTRICT, PIN-680 003.

BY SR.GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 7133 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF THE ESTIMATE FOR THE EXTENSION WORK OF PETITIONER'S EXISTING BUILDING PREPARED BY CIVIL ENGINEER, MAREES T.P.,DATED 29.12.2005 SHOWING THE AMOUNT RS.3,80,000/-.**

EXT.P2: **TRUE COPY OF THE ASSESSMENT ORDER NO.C2 6211/12 DATED 18-05-2013 PASSED BY THE RESPONDENT SHOWING THE CONSTRUCTION COST OF THE PETITIONER'S HOUSE AS RS.18,60,672/-.**

EXT.P3: **TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28.05.2014 ISSUED BY THE RESPONDENT.**

EXT.P4: **TRUE COPY OF THE REQUEST DATED 14.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.**

RESPONDENT(S)' EXHIBITS
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J

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W.P(C) No.7133 of 2015 N

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Dated this the 06th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with Exts.P2 and P3 recovery notices issued as against the assessment made on the petitioner. The petitioner's contention is that he had filed Ext.P1 returns but after the assessment was completed. The petitioner contends that he has a remedy under Section 8 for filing an application for return of overpaid cess. The petitioner also contends that what was carried on was only a renovation and the Cess Act could not been invoked in such circumstance.

2. Any construction activity including a renovation comes within the ambit of the Building and Other Construction Workers Welfare Cess Act, 1996. The definition clause of the Cess Act adopts the same definition of the Building and other Construction Workers (Regulation of Employment and Conditions of Service)

Act, 1996. Section2(d) defines “building or other construction work” and inter alia includes any alteration, repair or maintenance. The Notice was issued on 01.03.2013 and the assessment was completed as per Ext.P2 on 18.05.2013. The petitioner did not choose to file an appeal within the time provided under the Act. The petitioner rested contend and the demand notice was issued as per Ext.P3 on 28.5.2014. It is much after that the petitioner filed Ext.P1 return allegedly on14.10.2014.

3. By the time, the returns were filed, the assessment was completed. The petitioner's contention is that the completion of the building was in the year 2007. Nothing is produced herein to show that the construction was commenced or completed in the year 2007. Be that as it may, it is to be noticed that the Cess Act specifically provides for a return to be filed on completion of a construction activity by Section 4. The petitioner having not filed such a return, definitely, the Assessing Officer

under the Act is enabled to proceed against the construction, under the Act, for levy of cess, by issuing notice when the factum of construction or renovation comes to the notice of the Assessing Officer. No limitation on that count is provided in the Act and it was definitely the obligation of the owner to file the return.

4. The petitioner having not approached the appellate authority as provided under the Act, the petitioner cannot turn around and challenge the same under Article 226. Further this Court does not find any reason to interfere under Article 226 since no question of jurisdiction or a prima facie illegality or even violation of principles of natural justice as such arises in the aforesaid case. The petitioner does not dispute the receipt of notice or even the assessment order. Hence, interference under article 226 would not be possible going by the principles of **State of H.P and others v. Gujarat Ambuja Cement Ltd, and another [2005**

SCC 499].

5. Further this Court consistently has held that there can be no extension of limitation period under Article 226 and if an assessee under an enactment is negligent and does not file an appeal, the time provided under the enactment cannot be extended invoking the extra ordinary powers of the Court under Article 226. (**Assistant Commissioner of Central Excise v. Krishna Poduval [2005(4) KLT 947]** and **Panopharam v. Union of India [2010(3) KLT 149]**). The petitioner also does not have a case that he filed an appeal. If a delayed appeal can not be permitted to be filed there cannot also be any direction to consider a return filed much after the completion of assessment.

6. Section 8 takes in situations where the construction extends beyond one or more years and the assessee files a return for each year and pays tax thereon. The levy and collection of Cess as per Section 3

of the Cess Act is as prescribed and Building and other Construction Workers Welfare Cess Rules 1998 provides by Section 4(2), payment of cess on completion of every year, the cess computed on the cost of construction incurred for that year; when the duration of construction exceeds beyond an year. Section8 takes in circumstances when the Assessing Officer has passed an assessment order on the basis of the proposed plan of the owner, but the owner has decided to withdraw from or foreclose or modify the original plan, thus reducing the cost incurred. The petitioner does not have such a case and none can invoke Section 8 where there was a failure to file a return and respond to a notice of assessment.

7. However, the petitioner can be granted 4 equal monthly installments to clear off the entire arrears. The 1st instalment shall be paid on or before 06.04.2015 and thereafter; the due date of instalments falling on the 6th of each succeeding month. If any one default is

committed in remitting the instalments, then the recovery proceedings shall revive and continue. On the satisfaction of the dues, if there is any demand for future interest, the same shall be settled as the 5^{th} instalment.

Writ petition would stand dismissed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

//P.A to Judge//