IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY,THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

W.P.(C).No.10266 of 2015 (G)

PETITIONER(S):-

SUKUMARAN UNNITHAN, AGED 59 YEARS,
S/O.SREEDHARAN UNNITHAN,
BUNGLAVIL PUTHEN VEEDU,
KERALAPURAM P.O., KOLLAM.

BY ADVS.SRI.V.JAYAPRADEEP
SRI.V.JAYADHAR.

RESPONDENT(S):-
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1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF LABOUR,
SECRETARIAT, THIRUVANANTHAPURAM - 965 001.

2. THE ASSESSMENT OFFICER, UNDER THE BUILDING &
OTHER CONSTRUCTION WORKERS WELFARE CESS ACT,
O/O. THE DISTRICT LABOUR OFFICER,
CIVIL STATION, KOLLAM - 691 013.

BY GOVERNMENT PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).No.10266 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE ASSESSMENT ORDER DATED 25.2.2015 OF R2.
EXT.P2	COPY OF THE SALE DEED DATED 17.6.13 OF THE PETITIONER.
EXT.P3	COPY OF THE NOTICE DATED 10.2.15 ISSUED BY R2.
EXT.P4	COPY OF THE BUILDING TAX RECEIPT DATED 10.7.12 OF THE KOTTAMKARA GRAMA PANCHAYAT ISSUED TO MRS.RAZIAT.

RESPONDENT'S EXHIBITS:-
-------------------------------------- NIL.

Vku/ [true copy]

K. Vinod Chandran, J.

W.P(C) No.10266 of 2015-G

Dated this the 01st day of April, 2015

JUDGMENT

Heard the learned counsel appearing for the petitioner as also the learned Government Pleader, appearing for the respondents.

2. The petitioner is aggrieved with the demand made pursuant to Exhibit P3. Admittedly, the petitioner purchased a property with a building thereon, as per Exhibit P2 sale deed. The sale deed specifically indicates a concrete building of 70 square meters, having a value of Rupees One Lakh. The petitioner was issued with Exhibit P3, an ex parte assessment notice, proposing the value of the building to be taken as Rs.13,94,184/-. Subsequently, Exhibit P1 order was issued, reducing the valuation to Rs.10,97,920/- and assessing the cess payable as provided under the Building and Other Construction Workers' Welfare Cess Act, 1966 [for brevity "Cess Act"].

3. The petitioner is said to have appeared before the authority and produced Exhibit P2 sale deed. However, there is no discussion as to the value of the building as indicated in Exhibit P2 and there is no valuation independently conducted by the Assessing Officer also. The petitioner also has a contention that he would not come within the definition of “employer”, who has to satisfy levy of cess under the Cess Act, the definition of which is adopted from the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 [for brevity “Construction Workers Regulation of Employment Act”].

4. The definition of “employer” and “establishment” as provided under clauses (i) and (j) of sub-section (1) of Section 2 of the Construction Workers Regulation of Employment Act are extracted hereunder:

> **“2. Definitions.-** (1) In this Act, unless the context otherwise requires.-
>
> xxx xxx xxx
>
> **(i)** “employer”, in relation to an establishment, means the owner thereof, and includes,-
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> (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or though a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs;

xxx xxx xxx"

The petitioner's contention is based on the fact that the petitioner purchased a constructed building and he would not be an "employer" as contemplated under the aforesaid definition.

5. It is to be noticed that the "employer" in relation to an establishment means, the owner thereof. In the definition of "establishment', an individual is included and specific exclusion has

been made of any individual who employ workers in a construction work in relation to his own residence, the total cost of which does not exceed Rupees Ten Lakhs. Hence, by the specific inclusion and exclusion, any individual who is the owner of a building, constructed for his own residence, the value of which exceeds Rupees Ten Lakhs, would be an employer. Read along with the definition of “employer”, despite the fact that the petitioner purchased a constructed building, his ownership would attract levy under the Cess Act, if the construction value is above Rupees Ten Lakhs. It is not the person who carried on the construction work alone, who is defined as the 'employer'; but also the owner of a building. Though the levy is on the cost of construction, the one time levy can be imposed on any subsequent owner of the building.

6. In the present case, what is indicated is that the value of the building as indicated in the registered sale deed, at Exhibit P2, is only Rupees One Lakh. The registration has been made in the year 2013 and the construction is said to be prior to the said conveyance effected in favour of the petitioner. In such circumstance, the respondent-authority necessarily has to consider the valuation made at the time of registration as also obtain a

valuation of the building after conducting physical verification of the same related to the period when the construction was completed. Though Exhibit P2 sale deed indicates only a building of 70 square meters, Exhibit P3 assessment notice indicates the plinth area to be 158.43 square meters. Hence, any addition made by the petitioner would also have to be verified.

7. The petitioner's contentions having not been considered, Exhibit P1 has to be set aside. I do so. The petitioner shall appear before the 2nd respondent on 21.04.2015. The 2nd respondent shall conduct a physical verification of the building and ascertain the area of the construction as also require a valuation to be made by the appropriate authority or himself and pass final orders, within a period of three months from the date of appearance of the petitioner.

The writ petition is allowed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]