IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 13123 of 2014 (M)

PETITIONER :

M/S.MALLELIL INDUSTRIES PVT LTD.,
ATTACHAKKAL.P.O., KONNI, PATHANAMTHITTA-689 664,
REPRESENTED BY ITS MANAGING DIRECTOR,
R.SREEDHARAN NAIR.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH

RESPONDENT(S):

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1. THE JOINT REGIONAL TRANSPORT OFFICER,
PATHANAMTHITTA-689 645.

2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
PATHANAMTHITTA, PIN-689 645.

3. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
ENFORCEMENT OFFICER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN, PATTOM, TRIVANDRUM-695 004.

4. THE REGIONAL TRANSPORT OFFICER,
PATHANAMTHITTA-689 645.

R1 & R4 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
R2 BY ADV. SRI.C.K.JAYAKUMAR, SC, KMTWWFB
SRI.D.SAJEEV BABU, SC, KMTWWFB
R3 BY SRI.N.N.SUGUNAPALAN,SENIOR ADVOCATE
ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 13123 of 2014 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF RC CERTIFICATES OF THE VEHICLES OWN BY THE PETITIONER.**

P2- **TRUE COPY OF LETTER NO.KR/TVM/22645/ENF. 1(5)/07/10555, DT. 9.11.2007 ISSUED BY THE 3RD RESPONDENT.**

P3- **TRUE COPY OF COMBINED CHELAN SHOWING THE REMITTANCE OF CONTRIBUTION FOR THE MONTH MARCH, 2014.**

P4- **TRUE COPY OF RETURN FORM SHOWING THE MEMBERS' WAGE DETAILS DT. 11.4.2014.**

P5- **TRUE COPY OF JUDGMENT DATED 8.11.2013 IN W.P[C]NO.21538/2012 OF THIS HON'BLE COURT.**

P6- **TRUE COPY OF JUDGMENT DATED 31.10.2007 IN W.P[C]NO.32326/2007.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ANIL K.NARENDRAN, J.

W.P.(C)No.13123 of 2014

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Dated this the 11th day of September, 2015

JUDGMENT

The petitioner, which is a private limited company engaged in the business of quarrying and crushing of rocks, has filed this Writ Petition seeking a writ of mandamus commanding the 1st respondent to accept motor vehicle tax in respect of the vehicles owned by it without insisting proof of remittance of contribution to the Motor Workers Welfare Fund. The petitioner has also sought for a writ of mandamus commanding the 2nd respondent to issue certificate, certifying the non-applicability of the provisions of Kerala Motor Transport Workers Welfare Fund Act, 1985 in respect of the vehicles owned by it.

2. Going by the averments in the Writ Petition the petitioner owns 24 vehicles, which include lorries of various sizes, JCBs and Bolero Pick up, the registration numbers of which are furnished in paragraph 2 of the Writ Petition. Ext.P1 series is a copy of the registration certificates of those vehicles. The case of the petitioner is that, the establishment namely, M/s.Mallelil Industries, which was

a proprietorship concern, was covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Scheme framed thereunder, with effect from 1.5.2005. Later the business conducted by the proprietorship concern was taken over by the company, namely, Mallelil Industries Pvt. Limited. The very same Code number allotted to the proprietorship concern, i.e., KR/22645, was allotted to the petitioner Company after the take over. Relying on Exts.P3 and P4 the petitioner would contend that, it has been remitting the contributions under the Employees Provident Fund Scheme in respect of its employees. Relying on the 1st proviso to Section 4(1) of the Kerala Motor Transport Workers Welfare Fund Act, 1985, the petitioner would contend further that it is exempted from payment of contributions under the Motor Transport Workers Welfare Fund Scheme, since the provisions of the Employees Provident Fund and Miscellaneous Provisions Act are applicable to it. The petitioner is also relying on Ext.P5 judgment of this Court in W.P.(C)No.21538 of 2013 and Ext.P6 judgment in W.P.(C)No.32326 of 2007.

3. A statement has been filed on behalf of the Employees Provident Fund Organisation, the 3rd respondent herein, stating that the petitioner's establishment, namely, M/s.Mallelil Industries Pvt. Limited is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act and allotted with Code No. KR/22645. It is also stated in the aforesaid statement that, out of the total employees employed by the petitioner 22 employees are drivers.

4. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 and 4, the learned Standing Counsel for the 2nd respondent Board and also the learned Standing Counsel for the Employees Provident Fund Organisation.

5. The issue raised in this Writ Petition is covered in favour of the petitioner by the judgment of a Division Bench of this Court in **Hymavathi v. Special Deputy Tahsildar (2008 (3) KLT 807)**, in which this Court held that, in view of the proviso appended to Section 4 of the Act, once an establishment viz. Motor Transport Undertaking, is covered by the provisions of the Provident Fund Act,

1952, those motor transport undertakings are kept out of Section 4 of the Kerala Motor Transport Workers Welfare Fund Act, 1985. In view of the law laid down by the Division Bench of this Court referred to above, the petitioner is entitled to succeed in this Writ Petition.

In the result, this Writ Petition is allowed declaring that the petitioner is not liable to remit contribution to the Motor Transport Workers Welfare Fund in respect of its vehicles in view of the proviso to Section 4 of the Kerala Motor Transport Workers Welfare Fund Act.

Sd/-
ANIL K.NARENDRAN, JUDGE

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