

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 23103 of 2010 (K)

PETITIONER:

**M.L.ANIDHARAN
SECRETARY, SREE NARAYANA HEALTH CARE SOCIETY,
R.SANKAR NAGAR, PANGODU
KARIMPINPUZHA.P.O, KOLLAM.**

BY ADV. SRI.SHABU SREEDHARAN

RESPONDENTS:

- 1. UNION OF INDIA REPRESENTED BY THE
SECRETARY, MINISTRY OF LABOUR AND WELFARE DEPARTMENT
NEW DELHI - 1.**
- 2. STATE OF KERALA REPRESENTED BY THE
SECRETARY, LABOUR AND WELFARE DEPARTMENT
GOVT.SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 3. THE ASSISTANT LABOUR OFFICER(GRADE-1),
OFFICE OF THE DISTRICT LABOUR OFFICER
KOLLAM(THE ASSESSMENT OFFICER UNDER THE BUILDING
AND OTHER CONSTRUCTION WORKERS WELFARE CESS ACT-
1996) - 691 001.**

**BY ADV. SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDIA
R2 BY GOVERNMENT PLEADER SRI.V.K. RAFEEQ
R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
SRI. N NAGARESH, ASG**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : THE TRUE COPY OF THE DEMAND NOTICE NO.C2/KTR/1359/404PDO
DATED 27.02.2006 ISSUED BY THE 3RD RESPONDENT.**
- P2 : THE TRUE COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT
DATED 19.04.2006.**
- P3 : THE TRUE COPY OF THE ASSESSMENT NOTICE NO.C2/KTR/1359/404/06
DATED 10.02.2010.**
- P4 : THE TRUE COPY OF THE FINAL ASSESSMENT ORDER
NO.C2/KTR/1359/404/06 DATED 24.05.2010.**

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

smv

“C.R.”

K. Vinod Chandran, J

W.P.(C).No.23103 of 2010-K

Dated this the 21st day of January, 2015

JUDGMENT

The petitioner challenges levy of cess under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Admittedly the petitioner had constructed a building which would be liable to cess under the Act. Going by the averments in the writ petition itself, the construction of the building was completed over a period of 4 years.

2. On 07.02.2006, the petitioner was issued with Ext.P1 demand; being the cess assessed on the cost of construction which had been completed till that date. The same is permissible as per Rule 4 of the Building and Other Construction Workers Welfare Cess Rules, 1998, which permits levy under sub-section (1) of Section 3 of the Act within 30 days of completion of the construction project or within 30 days of the date on which the assessment of the cess payable is finalised. Sub section (2) permits levy in each year, when the duration of the project or construction work exceeds one year. The petitioner paid the amounts as demanded in Ext.P1 which is evidenced as per Ext.P2.

3. When the construction of the building was completed, the petitioner was issued with notice on 10.02.2010 produced as Ext.P3 demanding an amount of Rs.7,00,112/-, assessing the total cost of construction to be Rs.8,45,11,154/-. The petitioner has not filed any objection to Ext.P3. Ext.P4 final assessment order was passed on 24.05.2010, against which alternate remedies are provided under the Act and Rules. The petitioner obviously has chosen to approach this Court with a Writ Petition under Article 226 of the Constitution, on the ground that the levy made is exorbitant, in so far as the cess levied is for the benefit of the construction workers, while the amount by which such levy made includes the entire construction work. The petitioner's essential contention is that the cost of material would have absolutely no nexus with the work put in, by the construction workers and hence the same has to be excluded. Immediately it is to be noticed that the contention on the face of it is not sustainable. In a construction work, the materials used definitely has a bearing on the work carried out.

4. The Act and the Rules aforesaid have been enacted to provide for relief to the workers engaged in the un-organised sector of construction. The Act definitely is a welfare measure which the State has initiated; for which the activity, which the

workers whose interests are sought to be protected are involved in, is intended to be taxed. The activity in which the workers who are benefited by the enactment, are engaged in, is the construction work carried on. The enduring benefit of such construction enures to the person who carries on the same as the owner.

5. The measure for imposing such levy has been determined as the construction cost incurred and the levy has been specified to be on the “employer”, who is defined under the Building and Construction Workers Regulation of Employment and Condition of Services Act, 1996. The definitions in that Act, have been imported to the Cess Act by sub-section (b) of Section 2. Though the cess has been levied and is intended to be collected for the purpose of the welfare of those persons employed in construction, there cannot be any perceptible differentiation of the wages paid to the construction workers and the cost of construction otherwise incurred by an owner. The State is competent to decide the measure on which such levy has to be made.

6. The distinction between the levy of tax and the measure of tax prescribed has been highlighted by the Supreme Court and was reiterated in ***Union of India v. Bombay Tyre International Ltd.*** [(1984) 1 SCC 467] by a three Judge Bench,

which stood reaffirmed in ***State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201]*** by a Constitution Bench. The question raised therein was as to whether the wholesale price actually charged by the manufacturer could be taken as the measure of tax on which the levy is made. The said contention was raised on the multiple grounds that excise is a tax on manufacture or production and uniformity of incidence being a basic characteristic of the levy of excise, the exclusion of post-manufacturing expenses and post-manufacturing profits is a necessary corollary to achieve the said uniformity. It was urged that the conceptual value is only the cost of manufacture and the wholesale price charged by the manufacturer would not be a determining factor. Referring to a number of earlier decisions of the Federal Court, the Privy Council and the Supreme Court itself, it was held so:

“It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. We are of opinion

that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In our opinion, the original Section 4 and the new Section 4 of the Central Excises and Salt Act satisfy this test”.

7. It was clearly held that the levy of tax is defined by its nature and the measure of tax has to be assessed by its own standard. The standard adopted as the measure of the levy though would indicate the nature of the tax, it was found that, it does not necessarily determine the nature as such. This Court, hence, does not find any infirmity in the prescription of the measure of the levy as per the Cess Act.

The writ petition, hence, would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

Smv/vku/-

[true copy]