IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 23643 of 2011 (E)

PETITIONER(S):

M/S.LAXMI CRANES & TRAILERS (P) LTD.,
VII/602-A, KUNDANNOOR JUNCTION, MARADU,
ERNAKULAM DISTRICT, KERALA STATE, PIN-682 304,
REPRESENTED BY ITS DIRECTOR SUJITH K.BHASI.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENT(S):
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1. JOINT REGIONAL TRANSPORT OFFICER,
   THRIPUNITHURA-682 301.

2. REGIONAL TRANSPORT OFFICER,
   ERNAKULAM-682 030.

3. PROVIDENT FUND COMMISSIONER,
   OFFICE OF THE EMPLOYEES PROVIDENT FUND ORGANIZATION,
   KALOOR, KOCHI-682 017.

4. DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND,
   SRM ROAD, ERNAKULAM NORTH, PIN-682 018.

R1 & R2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R3 BY DR.S.GOPAKUMARAN NAIR,SENIOR ADVOCATE
ADV. SRI.A.RAJASIMHAN,SC,EPF ORGANISATION
R4 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.23643/2011

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE CHALAN DATED 17/8/2011 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT WITH A LIST OF EMPLOYEES WORKING UNDER PETITIONER COMPANY

EXHIBIT P2: TRUE COPY OF THE CHALN DATED 18/8/2011 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT EVIDENCING PAYMENT OF CONTRIBUTION TOWARDS EMPLOYEES PROVIDENT FUND WITH A LIST OF EMPLOYEES WORKING UNDER PETITIONER COMPANY.

EXHIBIT P3: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-7AS-5269.

EXHIBIT P4: TRUE COPY OF REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-7AS-5268.

EXHIBIT P5: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-4B-724.

EXHIBIT P6: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-39C-5877.

EXHIBIT P7: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-7R-3753.

EXHIBIT P8: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO VEHICLE NO.KL-39-9556.

EXHIBIT P9: TRUE COPY OF THE JUDGMENT MADE IN WPC.28536/2010 DATED 30/9/2010.

EXHIBIT P10: TRUE COPY OF THE DEMAND DRAFT DATED 18/10/2011 DRAWN ON STATE BANK OF INDIA, THRIPUNITHURA BRANCH FOR RS.2,820/- RELATING TO PAYMENT OF TAX.

EXHIBIT P11: TRUE COPY OF THE DEMAND DRAFT DATED 18/10/2011 DRAWN ON STATE BANK OF INDIA, TRIPUNITHURA BRANCH FOR RS.10,780/- RELATING TO PAYMENT OF TAX.

EXHIBIT P12: TRUE COPY OF THE DEMAND DRAFT DATED 18/10/2011 DRAWN ON STATE BANK OF INDIA, TRIPUNITHURA BRANCH FOR RS.2140/- RELATING TO PAYMENT OF TAX.

RESPONDANTS'S EXHIBITS :

EXHIBIT R4(A): TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT DATED 27/10/2011.

/TRUE COPY/

P.A.TO.JUDGE

sts

K.VINOD CHANDRAN, J.
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W.P.(C) No.23643 of 2011
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Dated this the 19th day of January, 2015

JUDGMENT

The petitioner in the above writ petition sought for exemption from coverage under the Kerala Motor Transport Workers Welfare Fund Act, (for short, Welfare Fund Act), on the ground that the petitioner is registered under the Employees Provident Fund and Miscellaneous Provisions Act 1952, (for short, EPF & MP Act 1952). Admittedly, as per proviso to Section 4 of the Welfare Fund Act, any establishment covered by the EPF & MP Act 1952 is exempted from the provisions of the Welfare Fund Act.

2. Writ petition was filed seeking a direction to the taxation authority to accept the motor vehicle tax for the vehicles mentioned in Exts.P3 to P8 without insisting for a clearance certificate under the Welfare Fund Act. The petitioner has also relied on **Hymavathi K.V Vs Special**

Deputy Tahsildar and Others (**2008(3) KLT 807)** to contend that they are entitled to exemption.

3. This Court, in the instant writ petition, directed the welfare fund officers to conduct an inspection and report on whether the establishment is covered under the EPF & MP Act 1952 . A report has been filed at Ext.R4(a) dated 27.10.2011 wherein it is stated that the petitioner is operating six goods vehicles and have only engaged five workers.

4. However, the coverage under the EPF & MP Act 1952 is seen to be admitted. The report Ext.R4(a) speaks of some of the employees, not having been included under the coverage of the EPF & MP Act 1952. That would be a circumstance, in which the authorities under the EPF & MP Act, 1952 can proceed against the petitioner. Since the establishment is found to be covered under the EPF & MP Act, 1952, the welfare fund authorities cannot seek for coverage under the Welfare Fund Act nor would there be a

necessity for issuance of clearance certificate under that Act. In such circumstance, the writ petition is allowed directing the tax of the petitioner's vehicles to be accepted without insisting for a clearance certificate under the Welfare Fund Act. The disposal of the writ petition is without prejudice to the proceedings, initiated or to be initiated under the EPF & MP Act, 1952 for coverage of all the employees, under the petitioner.

Writ petition allowed, with the above reservation and leaving the parties to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN, JUDGE

vdv //True Copy// P.A to Judge