IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No.27667 of 2013 (G)

PETITIONER'S:

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1. A.ANIL KUMAR,ADVOCATE,S/O.ANANTHA KAMATH,
AGED 51 YEARS,CCIV/1044C,NORTH CHERALAI,COCHIN-2.

2. NATIONAL EX- SERVICE MEN CO-ORDINATION COMMITTEE,
8/576,TD EAST ROAD,COCHIN-2,REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.G.KRISHNAKUMAR
SRI.K.A.ANI JOSEPH
SRI.D.R.BALAKRISHNA PRABHU

RESPONDENT'S:

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1. CORPORATION OF COCHIN,PARK AVENUE ROAD,
ERNAKULAM-682011,REPRESENTED BY ITS SECRETRY.

2. THE STATE OF KERALA,REPRESENTED BY
THE SECRETARY TO LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.

R1 BY SRI.N.RAVINDREN ACHARY,SC,COCHIN CORPN.
R2 BY ADV. GOVERNMENT PLEADER
SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25.06.2015 THE COURT ON 03-07-2015, DELIVERED THE FOLLOWING:

pk

WP(C).No.27667 of 2013 (G)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF THE GO(MS) 212/08 DATED 25-07-2008.

EXHIBIT P2:TRUE COPY OF THE REPRESENTATION DATED 28-06-2011 SUBMITTED BY THE 2ND PETITIONER TO THE IST REPSONDENT.

EXHIBIT P3:TRUE COPY OF THE ORDER DATED 12-12-2011 ISSUED BY THE IST RESPONDENT.

EXHIBIT P4:TRUE COPY OF THE REPRESENTATIONDATED 10-01-2013 SUBMITTED BY THE 2ND PETITIONER TO THE IST RESPONDENT.

EXHIBIT P5:TRUE COPY OF THE AGENDA WITH RECOMMENDATION & RESOLUTION DATED 11-07-2013 OFD THE IST RESPONDENT'S COUNCIL.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 27667 of 2013

Dated this the 3rd day of July, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P5 issued by the respondent corporation demanding service tax from the buildings of ex-servicemen, which are exempted from payment of service tax on the basis of a Government Order.

2. The Government has issued orders exempting residential buildings of ex-servicemen/his wife/widow from payment of property tax, invoking power under Section 281(2) of the Kerala Municipality Act, 1994. The petitioners allege that the 1st respondent is insisting for payment of 7% service tax on the buildings, which are exempted based on Ext.P1 Government Order. According to the petitioners, the 1st respondent has no authority to do so. The petitioners point out that Section 235(5), which enables the municipality to collect service tax, is only on the buildings, which are exempted under Section 235(1) of

the Act, and only to claim the cost of services covered by service taxes.

3. Arguments have been heard.

4. Ext.P5 resolution of the respondent corporation insists for payment of service tax from the petitioners, which according to the petitioners, is illegal. As per Section 281(2) of the Kerala Municipality Act, the Government is vested with power to exempt any person/class of persons from payment of any tax payable under the Kerala Municipality Act, 1994. Invoking the said power, Ext.P1 G.O. was issued by the Government. The learned counsel for the petitioners would point out that Section 235(1) itself exempts the building specified thereunder from payment of tax. Section 235(5) reads as follows;

> "(5) Notwithstanding anything contained in this Act or any other law for the time being in force, in the case of properties exempted from property tax under sub section (1), the Municipality shall be entitled to claim the cost of services covered by the service taxes."

It was pointed out that the residential buildings of ex-servicemen, including that of the 1st petitioner, are not exempted buildings under Section 235(1) of the Act. Apart from that, no service is provided by the 1st respondent to the ex-servicemen including the 1st petitioner. As those preconditions are absent, in the case of the 1st petitioner, whose residential building is exempted based on the Government Order, the 1st respondent cannot assess/collect service tax in lieu of property tax. As the power under Section 235 (5) of the Act to impose service tax, can only be invoked only if any service is provided by the municipality to the building, which are exempted under Section 235(1) of the Kerala Municipality Act, 1994, Ext.P5 is illegal and, therefore, liable to be interfered with.

In the result, the writ petition is allowed. Ext.P5 is quashed. It is hereby declared that the 1st petitioner is not liable to pay service tax to his building, which is already exempted based on Ext.P1 G.O. prior to the date of Ext.P3 or on any other period.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-