IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 16TH DAY OF FEBRUARY 2024 / 27TH MAGHA, 1945

WA NO. 1633 OF 2014

AGAINST THE JUDGMENT DATED 30/10/2014 IN WPC NO.27767/2014

OF HIGH COURT OF KERALA

APPELLANTS:- (Petitioners)

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1 MOHAMED SALI KASIM,
S/O.MOHAMED SALI, P.M.J.MANZIL,
I.T.I.ROAD, ATTINGAL - 695 101.

2 JAMEELA BEEVI ANEEZA,
W/O.MOHAMMED SALI KSAIM, P.M.J.MANZIL,
I.T.I.ROAD, ATTINGAL - 695 101.
APPELLANTS ARE REPRESENTED BY THEIR POWER OF ATTORNEY HOLDER SALAHUDEEN YOUSAF MOHAMMED, AGED 81 YEARS, S/O.YOUSUF LEBBA, P.M.J.MANZIL, I.T.I.ROAD, ATTINGAL - 695 101.

BY ADV SRI.T.M.ABDUL LATHEEF

RESPONDENTS:- Respondents

1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LABOUR DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.

2 THE ASSISTANT LABOUR OFFICER GRADE-I,
(ASSESSING OFFICER), THOZHIL BHAVAN,
OPP: VIKAS BHAVAN, K.S.R.T.C. DEPOT.,
POST MASTER GENERAL OFFICE,
THIRUVANANTHAPURAM - 695 001.

3 THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE, CHIRAYINKEEZHU,
ATTINGAL - 695 101.

4 LAL KUMAR N.,
M/S.ZION ENGINEERS AND BUILDERS PVT. LTD.,
ATTINGAL - 695 101.

5 THE SECRETARY,
BUILDING & OTHER CONSTRUCTION WORKERS WELFARE BOARD, THIRUVANANTHAPURAM - 695 001.

BY ADVS.

SR GP SRI T K VIPINDAS

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 16.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMIT RAWAL & C.S.SUDHA, JJ.

Writ Appeal No.1633 of 2014

Dated this the 16th day of February, 2024

J U D G M E N T

Amit Rawal, J.

The present *intra* court appeal is directed against the judgment of the learned Single Bench dated 30/10/2014, whereby the relief sought by the appellants/petitioners in challenging the order Ext.P4 on various grounds was dismissed. The case set of by the appellants/petitioners was that 1st appellant is a doctor by profession and working in Gulf. For the purpose of raising construction of a shopping complex building under the name 'Al-Noor Plaza', had entered into Ext.P1 agreement with a contractor. The Assessing officer, 2nd respondent issued a notice to the petitioner for payment of Cess under the Building and other Construction Workers Welfare Cess Act, 1996 and Rules raising a demand of ₹74,435/- (Rupees seventy four thousand four hundred and thirty five only) Ext.P2 which was followed by an assessment order dated 18.04.2012.

2. Instead of availing the remedy under Rule 14 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 1998, appellant preferred an application for reconsideration of the issue, which ultimately led to Ext.P4 order dated 01/03/2014, wherein examination of the records it was found that the Form-I submitted on 20/03/2010 and other provisions of the Act much less the verification, appellant was the absolute owner and therefore liable to pay cess. Noticing all these facts, the learned Single Bench dismissed the writ petition.

3. Advocate Abdul Latheef learned counsel appearing on behalf of the appellants submitted that the appellant before the Assessing Authority had raised a point that they were not liable to pay the amount of the cess, as provisions would reveal that the person who is carrying on the building and other constructions would be liable. The terms and conditions of the agreement entered into with the contractor would reveal that it was the liability of the contractor and not that of the appellant.

4. Advocate Vipindas learned Senior Government Pleader appearing on behalf of the State supported the impugned order as well

as judgment of the Single Bench.

5. We have heard learned counsel for the parties and appraised the paper book.

6. The definition of 'employer' in Section 2(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 reads as under:

> *"Section 2(i) "employer" in relation to an establishment, means the owner thereof, and includes.-*
>
> *(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 through a contractor, or by the employment of building workers supplied by a contractor, the contractor."*

7. On perusal of the same it is the owner who is liable to pay the Cess. The learned Single Judge relied upon the aforementioned view. We are of the view that said reliance is in tandem with the findings rendered in Ext.P4 and do not call for a different opinion than the one arrived at. There is no merit, appeal is dismissed.

8. At this stage, learned counsel for the appellants points out that *vide* order dated 17/03/2017 the appellant was directed to pay the amount demanded in Annexure-A1 for staying further proceedings in Ext.P6 demand. In another words, more than 75% of the demand has been paid and requests for a period of two months to pay the balance amount. We accept the request and direct the appellants to deposit the balance amount of 25% within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
AMIT RAWAL
JUDGE

Sd/-
C.S.SUDHA
JUDGE

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