
(2013) 01 KL CK 0178

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11697 of 2008

Suresh Babu

APPELLANT

Vs

Assessment Officer and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 2 KHC 169

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : R. Anilkumar and P. Bani, for the Appellant; K.C. Vincent, Senior Government Pleader and D. Sajeev, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The petitioner claims to have purchased a property with a building thereon. He purchased the same for a total sale consideration of Rs. 75 lakhs. Subsequent to the purchase, the petitioner was issued with Ext. P4 notice by the 1st respondent directing the petitioner to pay Rs. 42,522/- as cess under the Building and Other Construction Workers' Welfare Cess Act, 1996, on the construction costs of Rs. 42,52,190/- for the building. The petitioner is challenging Ext. P4 demand for cess under the said Act on the ground that the same is payable only by the original owner, who constructed the building and that the petitioner, being a subsequent purchaser, is not liable to pay cess under the Act. The learned Government Pleader submits that liability is on the owner, which would include the present owner as well. He points out that for the purpose of the Building and Other Construction Workers' Welfare Cess Act, 1996, the words and expressions used in that Act but not defined but defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, (hereinafter referred to as the parent Act) shall have the meanings respectively assigned to them in that Act. In the parent Act, the expression "employer" who is liable to pay cess is defined to mean the owner of an establishment and includes others described therein also. Therefore,

whoever is the owner of the building as on the date of demand is liable to pay the cess. Therefore, according to the learned Government Pleader, since the petitioner answers the definition of "employer" for the purpose of Act, the petitioner is liable to pay the cess as demanded in Ext. P4.

2. I have considered the rival contentions in detail. The levy and collection of cess under the Building and Other Construction Workers' Welfare Cess Act, 1996 is as per Section 3 of the Act, which reads thus:

3. Levy and collection of cess.--(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

Going by the same, the liability to pay cess under the Act is on the employer. The expression "employer" is not defined in the said Act. But Section 2(d) of the Act provides thus:

2. (d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 shall have the meanings respectively assigned to them in that Act.

The expression "employer" is defined in Section 2(i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, which reads thus:

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.

Going by the same, the owner of a building is liable to pay cess. Therefore, all owners of the building, if the cess remains unpaid, are liable to pay the cess payable under the Act, notwithstanding the fact that the owner is a subsequent owner. Admittedly the petitioner was the owner of the building at the time of issuing Ext. P4. The cess remains unpaid also. Consequently, the petitioner is liable to pay the cess as demanded in Ext. P4. Therefore, I do not find any merit in the writ petition and accordingly the same is dismissed. However, I make it clear that, if the petitioner is entitled to recover the cess paid by him from the previous or original owner, this judgment will not preclude him from doing so.