IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 2301 of 2006 (Y)

PETITIONER :

ASPINWALL & CO. (TRAVANCORE) LTD.
POST BOX NO.5, ALLEPPEY-688 001,
REPRESENTED BY ITS SENIOR MANAGER,
MR.M.V.VISWANATHAN.

BY ADVS.SRI.MATHEW JOHN
SRI.SUJESH MENON V.B.

RESPONDENT(S):

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1. THE CHIEF EXECUTIVE,
   KERALA COIR WORKERS WELFARE FUND BOARD,
   ALAPPUZHA.

2. THE DEPUTY TAHSILDAR (R.R), ALLEPPEY.

R1 BY ADVS. SRI.P.M.M.NAJEEB KHAN, SC, KCWWFB
SMT.K.V.RESHMI
SRI.DENIZON KOMATH, SC
R2 BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-09-2015 , ALONG WITH WPC.NO. 5982 OF 2006 AND CONNECTED CASES, THE COURT ON 19-10-2015 DELIVERED THE FOLLOWING:

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WP(C).NO.2301/2006

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE RECEIPT DATED 5/1/2002 ISSUED BY THE 1ST RESPONDENT.

P2 COPY OF THE NOTICE DATED 25/1/2005 BY THE 1ST RESPONDENT

P3 COPY OF THE REPLY DATED 16/2/2005 BY THE PETITIONER.

P4 COPY OF THE REPLY DATED 22/4/2005 BY THE 1ST RESPONDENT

P5 COPY OF THE LETTER DATED 9/5/2005 BY THE PETITIONER.

P6 COPY OF THE LETTER DATED 5/11/2005 BY THE 1ST RESPONDENT

P7 COPY OF THE REPLY DATED 22/11/2005 BY THE PETITIONER.

P8 COPY OF THE NOTICE DATED 17/1/2005 ISSUED BY THE 2ND RESPONDENT

P9 COPY OF THE MEMORANDUM OF AGREEMENT DATED 19/12/2014

RESPONDENT'S EXHIBITS:

R1(A) COPY OF THE ASSESSMENT OF WELFARE FUND CONTRIBUTION FOR THE PERIOD SINCE 1989-90 TO 2000-01

R1(B) COPY OF THE DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT DATED 25/1/2005

/TRUE COPY/

P.A.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 2301, 5982, 7630,
7635, 8026, of 2006

Dated this the 19th day of October, 2015

JUDGMENT

These writ petitions are filed by the members of Coir Workers Welfare Board seeking relief under clause 18 of the Kerala Coir Workers Welfare Fund Scheme, 1989 (hereinafter referred to as 'Scheme').

2. The common issue in all these writ petitions is in relation to the contribution effected by them in terms of the amended provisions of Section 4(2) of the Welfare Fund Act. Section 4(2) of the Kerala Coir Workers' Welfare Fund Act, 1987 (for short, the “Act”) was amended as follows:-

> "(2) Every employer, producer of coir products and dealer should pay to the Fund a contribution at the rate shown in the Annexure per year".

3. The validity of the above amended provision was challenged before this Court in O.P. Nos.11772 of 1990 and connected cases. The Division Bench sustained the challenge and held that the levy is unconstitutional. However, it is further ordered that the amount realised from the dealers for exporters need not be refunded. The above judgment is reported in **2004(1) KLT 312** [**Charangat Coir Manufacturing Company (P) Ltd Vs. State of Kerala].**

4. The petitioners have subsequent liability for contribution in terms of the other provisions of the Act. The petitioners submit that this Court held in ***Charangat's*** case (*supra*) that the amount need not be refunded, but that does not mean that the amount shall not be adjusted against the future liability of the petitioners.

5. The learned counsel for the petitioners relying on clause 18 of the Scheme submits that the petitioners are entitled for adjustment. The learned counsel for the petitioners with reference to clause 18 of the Scheme, points out that clause 18 specifically provides for adjustment for future contribution. It is submitted that

statutory right has not been taken away by the judgment of the Division Bench.

6. It is apposite to quote clause 18 of the Scheme which reads as follows :

> "18. Refund of contribution - The contribution to the Fund is not refundable otherwise by way of refund ordered on scrutiny of annual return of accounts or on refusal of membership and shall not bear any interest :
>
> Provided that any contribution made in excess of what is due to be paid by a coir worker or self employed person, or employer or producer of coir products or dealer in accordance with the rules and the scheme, may be adjusted against future contribution."

7. This Court is of the view that clause 18 has no application in this matter. Clause 18 would apply only if there is any excess payment, which means the payment has a colour of legality when it is made and it can be adjusted when it is subsequently found that the payment was excess. In this case, the payment has no legal colour in the sense, the Court has declared the levy as unconstitutional. Further, the petitioners ought to have brought clause 18 to the notice of the Division Bench.

When the Division Bench, in clear terms, held that the amount need not be refunded, this Court has to assume that the Division Bench was aware of clause 18 of the Scheme.

8. In fact, the Division Bench has relied on the judgment of the Hon'ble Supreme Court in **Koluthara Exports Ltd Vs. State of Kerala [2002(1) KLT 658]** wherein Hon'ble Supreme Court held that the amount need not be refunded as the amount has been already expended by the Board. It appears that the Division Bench, following the *dictum* in ***Koluthara's*** case on the premise that the amount has been already expended, ordered that it need not be refunded. The Division Bench did not make a distinction between the refund and adjustment for the purpose of future liability. Once the Division Bench held that the amount need not be refunded, it is inappropriate for this Court to order otherwise holding that amount shall be adjusted against future liability of the members. If the petitioners want to have a clarification, the remedy was to seek appropriate clarification before the Division Bench in ***Charangat's***

case and not by way of filing fresh writ petitions.

In that view of the matter, the writ petitions are dismissed as the petitioners cannot claim adjustment of the amount for any future liability.

A. MUHAMED MUSTAQUE,
JUDGE

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