

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 146 of 2011 (P)

PETITIONER:

**THE KUTTANAD RUBBER COMPANY LIMITED,
KELACHANDRA NAGAR, CHINGAVANAM,
KOTTAYAM-686 531, REPRESENTED BY ITS
EXECUTIVE DIRECTOR, JOSEPH THOMAS.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH**

RESPONDENT(S):

- 1. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE II, 4TH FLOOR,
LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR,
NEW DELHI-110 092.**
- 2. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, CHALAKUZHAY BUILDINGS,
C.M.S.COLLEGE ROAD, KOTTAYAM-686 001.**

BY SRI.JOY THATTIL ITOOP, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 146 of 2011 (P)

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1 : TRUE COPY OF THE NOTICE DATED 8.11.2004 ISSUED BY THE
2ND RESPONDENT.**

**EXHIBIT P2 : TRUE COPY OF THE NOTICE DATED 29.11.2004 PASSED BY THE
2ND RESPONDENT.**

**EXHIBIT P3 : TRUE COPY OF THE APPEAL PETITION A.T.A.NO.187(7)/2005 (WITHOUT
ITS ANNEXURES) DATED 22.2.2005.**

**EXHIBIT P4 : TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 23.11.2010 IN
ATA.NO.187(7)/2005.**

**EXHIBIT P5 : TRUE COPY OF THE ORDER OF THE TRIBUNAL IN ATA.NO.752(7) 2003
FILED BY THE OTHER PLANTATION COMPANY DATED 22.10.2010.**

EXHIBIT P6 : TRUE COPY OF THE ORDER IN WP(C).NO.21195/2008 DATED 15.7.2008.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

K. Vinod Chandran, J.

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W.P.(C)No.146 of 2011

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Dated this the 10th day of March, 2015.

JUDGMENT

1. Petitioner is aggrieved with Ext.P2 order, as confirmed in Ext.P4.

The issue is with respect to the imposition of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, '952 (for brevity, the "Act"). The period, which is the subject-matter of the writ petition, is March, 2001 to February, 2004. A reading of the order indicates that, the assessee had taken a specific contention that, the contributions were delayed, only on account of the financial stringency. Both the authorities found that, that is not a ground, which could be urged for mitigation, under Section 14B.

2. A Division Bench of this Court in ***Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd. (2013 (3) K.L.T. 790)*** held that, the same would be a mitigation of damages to be imposed

under Section 14B and also that, the officer has a discretion, insofar as reducing the quantum. In such circumstances, Exts.P2 and P4 are set aside, only since, they do not consider the mitigation, which is contemplated under Section 14B of the Act. The parties shall appear before the Officer within a period of three weeks from today and the assessee shall be permitted to produce any evidence to substantiate its contentions. The same shall be done within a period of one month from the date of appearance. The assessee shall be given an opportunity of hearing and the matter shall be settled within a period of four months from the date of appearance.

Writ petition is disposed off. No costs.

K. Vinod Chandran, Judge.

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