IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 3413 of 2010 (B)

PETITIONER(S):
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1. **MOHAMMED NOUFAL, MANAGING PARTNER,**
   M/S.TASTY NUT INDUSTRIES, KILIKOLLUR, KOLLAM.

2. **SMT.JAMEELA BEEVI,**
   M/S.J.S. CASHEW CORPORATION,
   PATTATHTIL, AYATHIL P.O., KOLLAM.

BY ADV. SRI.T.M.CHANDRAN.

RESPONDENT(S):

THE REGIONAL PROVIDENT FUND COMMISSIONER II,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, KOLLAM-691 001.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 3413 of 2010 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	**COPY OF THE ORDER DATED 03/01/2007 PASSED BY THE ASST. PROVIDENT FUND COMMISSIONER.**
EXT.P2	**COPY OF THE CHALLAN DATED 13/03/2007 FOR THE PAYMENT OF RS.60,350.**
EXT.P3	**COPY OF THE SUMMONS DATED 17/02/2009 ISSUED BY THE RESPONDENT.**
EXT.P4	**COPY OF THE PETITION DATED 27/01/2010 FILED BY THE PETITIONERS.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.A. TO JUDGE

rs.

K.VINOD CHANDRAN, J

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W.P.(C).No. 3413 of 2010

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Dated 11th March, 2015

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JUDGMENT

The petitioners are aggrieved with the proceedings taken under Section 7C of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act). The petitioners admittedly, were covered under the EPF & MP Act and had been regularly paying contributions. However, the Assistant Provident Fund Commissioner noticed that certain amounts paid on the wages, escaped assessment under the EPF & MP Act. A notice was issued under Section 7A and Ext.P1 order was issued.

2. Ext.P1 order found that the records produced by the employer indicates that certain amounts were not considered for computation of wages and the escaped amounts for the period from 4/2004 to 12/2005 was assessed to be Rs.60349.05.

Actually no proceeding under Section 7A could have been issued since Section 7A deals with a case in which a dispute arises regarding the applicability of the Act. Herein, there is no question of any dispute on the coverage, since admittedly the petitioners are covered and had been paying contributions.

3. Even Ext.P1 indicates that there are escaped amounts which have not been assessed under the EPF & MP Act. Hence, proceedings, which is tiled as one under Section 7A should have actually been under Section 7C. The petitioners have paid the said amounts assessed under Ext.P1 as per Ext.P2. There is no dispute on that count.

4. Subsequently, a notice was issued under Ext.P3 for the period between 4/2005 to 12/2005, again, alleging that there is an escaped assessment. These proceedings, however, was under Section 7C itself. The petitioners approached this Court on the premise that since already an escaped

assessment has been made, there is no warrant for a further proceeding under Section 7C.

5. In the above circumstances, petitioners would appear before the Officer within one month from today and the Officer shall determine as to whether the escaped assessment indicated in Ext.P3 is already taken care of by Ext.P1. If such escaped amounts have already been assessed under Ext.P1, there would be absolutely no requirement for any proceeding as per Ext.P3 and the same would stand set aside.

The writ petition is allowed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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