

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C) .No. 9426 of 2010 (C)

PETITIONER(S) :

M/S.DUROFLEX PRIVATE LIMITED,
P.B.NO.3808, CHUNGOM, ALLEPPEY-688 011
REPRESENTED BY ITS DIRECTOR, LT.COL.MOHAN V.ANDREWS.

BY ADVS.SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH

RESPONDENT(S) :

THE CHEIF EXECUTIVE,
KERALA COIR WORKERS' WELFARE FUND BOARD,
ALLEPPEY-688 001.

BY SRI.THOMAS ABRAHAM, SC, KCWWFB, ALAPPUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

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- EXT.P-1: TRUE COPY OF DEMAND NOTICE DATED 22/02/2000 OF THE RESPONDENT TO THE PETITIONER.
- EXT.P-2: TRUE COPY OF INTERIM ORDER DATED 13/06/2000 OF THE KERALA HIGH COURT IN OP NO.16617/2000.
- EXT.P-3: TRUE COPY OF JUDGMENT DATED 27/06/2008 OF THE KERALA HIGH COURT IN OP NO.16617/2000.
- EXT.P-4: TRUE COPY OF LETTER DATED 11/08/2008 OF THE RESPONDENT TO THE PETITIONER.
- EXT.P-5: TRUE COPY OF LETTER DATED 01/09/2008 OF THE PETITIONER TO THE RESPONDENT.
- EXT.P-6: TRUE COPY OF LETTER DATED 30/10/2008 OF THE RESPONDENT TO THE PETITIONER.
- EXT.P-7: TRUE COPY OF LETTER DATED 11/11/2008 OF THE PETITIONER TO THE RESPONDENT.
- EXT.P-8: TRUE COPY OF LETTER DATED 16/01/2010 ALONG WITH ASSESSMENT ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.9426 of 2010

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Dated this the 1st day of September, 2015

JUDGMENT

The petitioner, a is a small scale industry engaged in the manufacturing of Fibre foam Mattresses, is seeking a direction to the respondent to refund the deposit of ₹2,38,976/- paid by them pursuant to Ext.P2 interim order of this Court against the contribution demanded for 2003-2004 to 2009-2010 under the Kerala Coir Workers Welfare Fund Act, 1987 as on the beginning of each year and to refund the balance amount with interest @ 12% per annum after quashing Ext.P8.

2. When the respondent raised Ext.P1 demand on the petitioner on the basis of the turnover, the petitioner approached this Court with W.P(C) No.16617 of 2010 challenging the various provisions of the Welfare Fund Act, including Section 4(2). By interim order dated 13.6.2000, this Court stayed the operation of the said Section and all

demands made against the petitioner, on condition that the petitioner pays 30% of the disputed demand. Ext.P2 is the copy of the order. When the writ petition came up for final hearing, this Court by Ext.P3 judgment allowed the writ petition following the Division Bench decision in **Charangat Coir Manufacturing Co. (P) Ltd. v. State of Kerala** [2004 (1) KLT 312].

3. The petitioner points out that after the judgment of this Court, the respondent by letter dated 11.8.2008 demanded arrears of contribution under the Act for 2003-04 to 2008-08. However, the respondent has refused to give credit for the amount deposited pursuant to Ext.P2 interim order on the ground that the contribution paid already need not be refunded. The petitioner alleges that this is clearly erroneous since the deposit was made pursuant to the interim directions of this Court and the same become refundable when the writ petition was allowed. It is with this background, the petitioner has approached this Court.

4. No counter affidavit has been filed by the respondents in spite of granting sufficient opportunity.

5. Arguments have been heard.

6. As rightly pointed out by the learned counsel for the petitioner, the deposit made by the petitioner pursuant to Ext.P2 order does not fall within the scope of the amounts referred to in paragraph 10 of the decision of the Division Bench reported in 2004 (1) KLT 312 (cited supra). The deposit made by the petitioner was pursuant to the directions of this Court as a condition for stay of recovery of the demand in Ext.P1.

7. It is crucial to note that the demand in Ext.P1 was subsequently set aside as a result of which the deposit made pursuant to the interim order became liable to be refunded. Therefore, this Court is of the definite view that the petitioner is entitled to the relief as prayed for.

In the result, the writ petition is allowed. Ext.P8 is quashed. The respondent is directed to adjust the deposit of ₹2,38,976/- paid by the petitioner pursuant to Ext.P2 interim direction of this Court against the contribution demanded for 2003-04 to 2009-10 under the Act as on the beginning of each year and to refund the balance amount with interest within a period of one month from the date of receipt of a copy of this judgment failing which the respondent shall pay interest @ 12% per annum on the aforesaid amount from the date on which the payment has become due till the amount is actually paid.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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