

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 14361 of 2007 (I)

PETITIONER(S):

M/S.KHADI AND VILLAGE INDUSTRIAL
PRODUCERS CO-OPERATIVE SOCIETY LTD.NO.C.54
PAKALOMATTAM P.O., KURAVILANGAD, KOTTAYAM
REPRESENTED BY ITS CHAIRMAN, M.M.SCARIA MATTAM
KURIANAD P.O., KOTTAYAM.

BY ADVS.SRI.JAMES KURIAN
SRI.SANTHOSH MODAYIL

RESPONDENTS:

1. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, SUB REGIONAL OFFICE
CHALAKKUZHY BUILDINGS, CMS COLLEGE ROAD, KOTTAYAM.
2. THE RECOVERY OFFICER, O/O. THE
ASSISTANT PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE, CHALAKKUZHY BUILDINGS
CMS COLLEGE ROAD, KOTTAYAM.
3. THE EMPLOYEES PROVIDENT FUNDS
APPELLATE TRIBUNAL, REPRESENTED BY ITS, REGISTRAR
O/O. THE EPF APPELLATE TRIBUNAL, NEHRU PLACE
NEW DELHI-110 001.
4. KERALA KHADI WORKERS WELFARE FUND
BOARD, REPRESENTED BY ITS CHIEF EXECUTIVE, OFFICER
O/O. THE KERALA KHADI WORKERS WELFARE, FUND BOARD
TRIVANDRUM.

R1 - R3 BY ADV. SRI,JOY THATTIL ITOOP, SC, EPF ORGANISA
R4 BY SRI.K.P.HARISH,(SC)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSESSMENT DT 28.5.2002

EXT.P2: TRUE COPY OF THE review PETITION DATED 10.7.02002

EXT.P3: TRUE COPY OF THE ORDER IN THE REVIEW PETITION DT 5.8.2002

EXT.P4: TRUE COPY OF THE CERTIFICATE ISSUED BY THE 4TH RESPONDENT DT 9.4.2007

EXT.P5: TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DT 5.3.2007

EXT.P6: TRUE COPY OF THE ORDER OF ATTACHMENT DT 28.6.2006

EXT.P7: TRUE COPY OF THE NOTICE OF DEMAND DT 7.6.2006

EXT.P8: TRUE COPY OF APPEAL MEMORANDUM SENT BY POST DT 13.4.2007

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 14361 of 2007

Dated this the 6th day of April, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P1 coverage made under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 by a proceeding under Section 7A. The petitioner is said to be a Khadi and Village Industrial Producers Co-operative Society, which is exempted by way of enrollment in a more beneficial contributory provident fund scheme as formulated by the Government of Kerala under the Kerala Khadi Workers Welfare Fund Act, 1989 (Act 1 of 1989).

2. The brief facts to be noticed are that the petitioner was initially covered in the year 1974-75. Subsequently, the petitioner was exempted by the appropriate Government. However, from the year 1995, the exemption was not continued since in any case, the petitioner was exempted for reason of enrollment under the

aforesaid Act of 1989. Despite that the petitioner was proceeded with under Ext.P1; assessing the contribution between 4/1995 to 12/2001. The petitioner however, did not challenge the said proceedings by way of appeal provided under the Act of 1952 nor was the specific contention of exemption under Section 16 raised in a writ petition under Article 226 within a reasonable time.

3. When the recovery proceedings were initiated, the petitioner is said to have filed an appeal with a delay of 1717 days. The Act of 1952 provides for 60 days time from the date of order to file an appeal and a further period of 60 days in which an application for condonation of delay could be moved. It is trite that when such specific time for delay condonation is specified in the statute itself, the authority conferred with the power to condone such delay cannot go beyond such period. It is also a declared position that under Article 226 no extension of such period can be granted as has been laid down in ***Assistant Commissioner of Central Excise v. Krishna Poduval*** [2005(4) KLT 947] and ***Panopharam v. Union of India*** [2010(3) KLT 149]

4. However, it is to be noticed that the petitioner had approached the authority under Section 7B of the Act, by Ext.P2 application for review on the ground that Section 16(1)(c) would commend exemption of the petitioner's establishment for reason of it being covered under the Act of 1989. The order passed in review has been produced at Ext.P3. In Ext.P3, the only contention to reject the claim of the establishment was that earlier the coverage was accepted and that the exemption also was granted. That may not be a proper approach, especially since, a review was filed specifically seeking exemption on the ground that the petitioner is entitled to exemption since the petitioner's employees are enrolled in a more beneficial scheme. In such circumstance, Et.P3 would stand set aside.

5. The petitioner shall appear before the Assistant Provident Fund Commissioner, the 1st respondent herein on 30.04.2015. The petitioner shall also produce sufficient materials to show that the coverage under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is exempted by virtue of provision of Section 16(1)(c) for reason of coverage under the Act of 1989. If the same is found to be correct, then, necessarily there shall be no coverage effected to the petitioner's establishment. If the review petition is allowed, then definitely recovery

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made as per Ext.P1 shall be refunded to the petitioner without interest, if the same is refunded within a period of three months and with interest @ 6% if not paid within the said period.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge