

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WP(C).No. 15519 of 2010 (L)

PETITIONER(S):

**M/S. ABBAS CASHEW CO.,
REPRESENTED BY
ITS PARTNER P.A.MOHAMMED NAJEEB,
KALLUMTHAZHAM.P.O.
KOLLAM, KERALA STATE.**

**BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.**

RESPONDENT(S):

**ASSISTANT PROVIDENT FUND COMMISSIONER
E.P.F.O., BHAVISHYANIDHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-4, KERALA.**

**BY ADVS. SRI.N.N. SUGUNAPALAN, SC, P.F.
SMT.T.N.GIRIJA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 15519 of 2010 (L)

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE ORDER NO.KR/TVM/CIRCLE.18/DAMAGES/KR/1268/CA DATED
22/1/2004 PASSED BYT THE R1**
- P2: COPY OF THE ORDER DATED 26/2/10 OF THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL NEW DELHI IN ATA NO.269(7)/2007.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.VINOD CHANDRAN, J

W.P.(C).No. 15519 of 2010

Dated 6th January, 2015

JUDGMENT

The petitioner is aggrieved with the dismissal of the appeal filed before the Employees Provident Fund Appellate Tribunal, New Delhi, by Ext.P2, for reason of the appeal having been filed beyond the condonable period.

2. The petitioner has two contentions to challenge the appellate order; one that he was not the employer during the time of effecting contribution and hence would not be liable to damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'EPF & MP Act'). The other ground in challenge of the appellate order is that, there was no effective notice of the order under Section 14B which was dated 22.01.2004 since the petitioner had come into possession of the Unit only on 16.01.2004. The petitioner had filed an appeal within 60 days of acknowledge of Ext.P1 order, is the contention raised in the writ petition. The

petitioner also relies on a judgment of this Court reported in **Harrisons Malayalam Ltd. v. Regional Provident Fund Commissioner (2006 KHC 205)** to buttress the contention that the computation of time has to start from the date of effective notice and not from the date of the order.

3. Though the contention with respect to the liability is one on merits, it is to be noticed that Section 17B of the EPF & MP Act imposes liability for payment of prior contribution on any subsequent purchaser/transferee also. With respect to the contention that the appeal was filed within 60 days of receipt of the order, it is to be noticed that there is no mention in the writ petition as to the date on which the order was received, or the date on which the appeal was filed.

4. The learned counsel for the petitioner has handed over a copy of the appeal memorandum and the affidavit filed along with the application for condonation of delay; across the bar. Even looking at the affidavit filed, there is no mention about the exact date on which the order was

received. The lackluster statement is that “the appellant came to know about the impugned order only on 12.03.2007 and thereafter obtained a true copy of the same” (sic). There is no statement as to when such a true copy was received and when the appeal itself was filed before the Appellate Tribunal. In such circumstances, the afore cited decision would not come to the aid of the petitioner.

5. As far as the question of maintainability of an appeal beyond the period for condonation of delay as provided under the Statute, the said question is covered by the decision of this Court in **Assistant Commissioner of Central Excise v. Krishna Poduval (2005 (4) KLT 947).**

In the above circumstances, the writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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