IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

W.P.(C).No.24978 of 2009 (N)

PETITIONER(S):-

BENNY SEBASTIAN, S/O.SEBASTIAN,
MUNDACKAL HOUSE, PANNIMATTOM P.O., VELIYAMATTOM
THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SRI.RENJITH B.MARAR
SRI.L.RAJESH NARAYAN
SMT.LAKSHMI.N.KAIMAL
SMT.PA.PRIYA.

RESPONDENT(S):-
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1. CHEIF WELFARE FUND INSPECTOR,
TODDY WORKERS WELFARE FUND BOARD, THIRUVANANTHAPURAM.

2. THE DISTRICT WELFARE FUND INSPECTOR,
TODDY WORKERS WELFARE BOARD, THODUPUZHA,
IDUKKI DISTRICT.

R1 & R2 BY STANDING COUNSEL SRI.RENIL ANTO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24978 of 2009(N)

APPENDIX

PETITIONER'S EXHIBITS: -

EXT.P1: TRUE COPY OF THE ORDER DATED 30.05.2009 SERVED ON THE PETITIONER ON 22.8.2009.

EXT.P2: TRUE COPY OF THE MINOR ASSESSMENT ORDER DATED 30.05.2009 SERVED ON THE PETITIONER ON 22.8.2009.

EXT.P3: TRUE COPY OF THE ORDER DATED 30.05.2009 SERVED UPON THE PETITIONER ON 21.8.2009.

EXT.P4: TRUE COPY OF THE POSTAL COVER.

RESPONDENT'S EXHIBITS:-

NIL.

VKU/ (TRUE COPY)

K.Vinod Chandran, J.

W.P.(C).No.24978 of 2009

Dated this the 05th day of February, 2015

JUDGMENT

The petitioner, admittedly, was a licensee of two toddy shops, for the years 2004-05, 2005-06 and 2006-07; the determination orders of which, under the Kerala Toddy Workers' Welfare Fund Act, 1969 [for brevity "Welfare Fund Act"], are produced at Exhibits P1 to P3. The petitioner's contention is limited to the question of interest liability.

2. The petitioner has paid the entire principal amount determined as arrears, by virtue of an interim order dated 28.08.2009. The learned counsel for the petitioner submits that, the determination orders for the subject years were made only in the year 2009, as is indicated in Exhibits P1 to P3. It is also submitted that Section 8A provides for advance contribution, which the petitioner had regularly paid. A determination order to be passed under Section 8 has to be immediately on the conclusion of the subject financial year.

Otherwise the licensee/employer would not be liable to pay any interest on such arrears, is the argument. It is also submitted that the provision for recovery under Section 9 speaks of liability of interest, which shall be only on the arrears being determined and the liability, if at all, arises only when such determination orders are made, contends learned counsel.

3. At the outset it has to be noticed that there is no limitation prescribed for a determination order to be passed under Section 8A. A reading of Section 8A would indicate that the licensee/employer, on the basis of self assessment, has to pay the entire contributions, which would be the liability of the petitioner/licensee/employer under the Act, as advance contribution. Section 8A speaks of monthly advance contribution of an amount equivalent to $1/12^{th}$ of the amount payable annually. Hence, if the advance contribution is paid in accordance with the liability mulcted under the Act, then there should be no reason for a determination order to be passed under Section 8A. Even if such an order is passed, there would be no arrears due under the Act.

4. In trhe case of the petitioner, for the subject years, a reading of the order would indicate that an enquiry was commenced in the year 2007. This definitely would have been on the complaint of the employees, about short-fall of the contributions paid. When the employer/licensee is obliged to make the contributions on self assessment, the employer/licensee has to make contributions in accordance with the liability cast under the Act and any arrears falling due would be related back to the year of determination. When the determination order computes the liability under the Act as more than that was paid as advance contribution, it was only because of the default of the employer/licensee.

5. In the present case, as was noticed above, the enquiry commenced in the year 2007. The petitioner had also, as is indicated in Exhibit P1, admitted to the schedule of wages, which the employees had submitted before the officer empowered under Section 8 to pass a determination order. Hence, the default on the part of the petitioner for the short-fall committed stands admitted, as is evident from the

determination orders passed. In such circumstances, the petitioner cannot be absolved of the interest liability. The interest liability definitely would arise from the close of the subject financial year and the petitioner would have to satisfy the same, in accordance with law. The petitioner shall be granted a month's time to satisfy the interest liability on the amounts determined as due under the Act, till the date of payment of the principal amount.

The writ petition would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge

vku/-

(true copy)