IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 25784 of 2011 (W)

PETITIONER(S):

N.JAYAPRAKASH, MANAGING PARTNER,
M/S. G.P.N.CASHEW EXPORTING COMPANY, THAMARAKULAM
KOLLAM.

BY ADVS.SRI.T.M.CHANDRAN
SRI.S.SUJITH
SRI.V.A.SASIDHARAN
SRI.JOSEPH ALBIN NEDUNTHALLY

RESPONDENT(S):

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1. THE REGIONAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAVAN, PATTOM P.O.
THIRUVANANTHAPURAM-4.

2. THE EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, NEW DELHI-110 092.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25784 of 2011

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1.	TRUE COPY OF ORDER DATED 04/4/2002 PASSED BY THE 1ST RESPONDENT.
EXHIBIT-P2.	TRUE COY OF APPEAL DATED MAY 2002 FILED BEFORE THE 2ND RESPONDENT.
EXHIBIT-P3.	TRUE COPY OF ORDER DATED 11.7.2011 PASSED BY THE 2ND RESPONDENT.
EXHIBIT-P4.	TRUE COPY OF CHALLAN RECEIPT DATED 11.4.2011.
EXHIBIT-P5	TRUE COPY OF ORDER DATED 25.5.2000 PASSED BY R1
EXHIBIT-P6	TRUE COPY OF CERTIFICATE DATED 17.5.2000 ISSUED BY INSPECTOR OF FACTORIES & BOILERS
EXHIBIT-P7	TRUE COPY OF CHALLAN DATED 11.2.1998
EXHIBIT-P8	TRUE COPY OF CHALLAN DATED 15.7.1999
EXHIBIT-P9	TRUE COPY OF CHALLAN DATED 12.12.2000
EXHIBIT-P10	TRUE COPY OF CHALLAN DATED 15.2.1999
EXHIBIT-P11	TRUE COPY OF CHALLAN DATED 11.12.2000
EXHIBIT-P12	TRUE COPY OF CHALLAN DATED 22.1.2001
EXHIBIT-P13	TRUE COPY OF CHALLAN DATED 22.1.2001
EXHIBIT-P14	TRUE COPY OF CHALLAN DATED 24.5.2001
EXHIBIT-P15	TRUE COPY OF CHALLAN DATED 24.5.2001
EXHIBIT-P16	TRUE COPY OF CHALLAN DATED 11.4.2001
EXHIBIT-P17	TRUE COPY OF NOTICE DATED 10.10.2011 ISSUED BY RECOVERY OFFICER.

//True Copy//

P.A. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 25784 of 2011

Dated 4th February, 2015

JUDGMENT

The petitioner is aggrieved with the order at Ext.P3 wherein the Appellate Tribunal rejected an appeal from an order under Section 7B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act). The proceedings against the petitioner culminated in a notice issued under Section 7A of the EPF & MP Act for the period from 1/97 to 12/97.

2. An order was passed at Ext.P5 wherein assessment was made for the period between 1/97 to 12/97. Ext.P5 is said to be an *ex parte* order. The petitioner hence moved an application for review under Section 7B of the EPF & MP Act and obtained a direction from this Court to consider the same pursuant to which Ext.P1 was

passed. A reading of Ext.P1 would indicate that the petitioner had four contentions to be urged in the review; ie, the non-appearance of the petitioner was not wilfull, no effective opportunity was granted, the applicant's letters were not considered by the Assessing authority and that the petitioner had been assessed for the contributions made during the periods when the Factory was lying closed.

3. A reading of the provision under Section 7B would indicate that the four grounds definitely could not be urged in a review application. However, the assessment of contribution during the period when the establishment was lying closed, was elaborately considered by the authority.

4. The petitioner had a contention that from February to April 1997 and between June to

December 1997, the Factory was not working. The petitioner hence, was directed to file an affidavit witnessed by the President and Secretary of the recognized workers Union and to produce a certificate from the Local Office of the Employees State Insurance Corporation (ESI Corporation). Certain other records were also directed to be produced by the petitioner.

5. The petitioner did not produce all the records since the petitioner submitted that the same were missing, at this distance of time. A certificate from the ESI Corporation was also not produced. The petitioner filed an affidavit attested by the Notary, however not countersigned by any office bearers of a representative Union. The Authority found that the assessment order was passed on the basis of the Enforcement Officer's report. The Enforcement Officer was found to have inspected

the premises and interacted with the persons employed therein. The assessment was also made on the basis of Form-12A return submitted by the employer himself, and the original records produced by the employer, during the inspection of the Enforcement Officer.

6. With respect to the non functioning of the establishment, the petitioner chose to produce Ext.P6 which indicated that for the periods in which the petitioner asserted that the establishment was not working, one “M/s.Kaju Nut Products” was certified as not working by the Inspector of Factories and Boilers. Said contention was one raised on the production of such a document. The petitioner never had a contention before the authority that the petitioner's Unit was taken over by “M/s.Kaju Nut Products” nor was any material produced, but for Ext.P6 certificate, to establish that

"M/s.Kaju Nut Products" had in fact taken over the petitioner's establishment.

7. Looking at the order passed by the Original Authority as also the order of the Tribunal, this Court does not find any infirmity, which would commend interference of this Court. The writ petition is found to be devoid of merit. However, considering the fact that there is a stay of proceedings, from the admission of the writ petition, the petitioner shall approach the respondent authority with a certified copy of this judgment within a period of three weeks from today. The dues as on today along with Section 7Q interest, would be communicated to the petitioner and the petitioner would be obliged to satisfy the same in six monthly instalments starting from 5th March, 2015. The petitioner has also produced Exts.P7 to P16 receipts to evidence payment made

during the period in which the assessment was carried out. Petitioner shall produce the originals of the same before the Assessing Authority under the EPF & MP Act and deductions shall be made for such amounts.

With the above direction, the writ petition would stand dismissed. Parties are directed to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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