

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 33975 of 2014 (V)

PETITIONER(S):

**SPECTRUM SOFTTECH SOLUTIONS PVT. LTD.,
MAHAKAVI G.ROAD, KOCHI - 11,
REPRESENTED BY ITS CHIEF OPERATING OFFICER,
MR.K.P.CLEETUS.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS**

RESPONDENT(S) :

- 1. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE II, 4TH FLOOR,
LAXMI NAGAR, DISTRICT CENTRE, LAXMI NAGAR,
NEW DELHI - 110 092.**
- 2. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, 36/685A, BHAVISHYANIDHI BHAVAN,
P.B.NO. 1985, KALOOR, KOCHI - 682 017.**

**BY DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE), S.C
ADV. SRI.A.RAJASIMHAN, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2015, ALONG WITH W.P.(C).NO.34643 OF 2014 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE ORDER DATED 15/12/2011 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P2:** TRUE COPY OF THE CHALLAN DATED 27/03/2012.
- EXHIBIT P3:** TRUE COPY OF THE ORDER IN A.T.A.NO. 165 (7) 2012 DATED 22/04/2013 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P4:** TRUE COPY OF THE ORDER DATED 25/07/2013 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P5:** TRUE COPY OF THE ORDER IN A.T.A.NO. 533 (7) 2013 DATED 08/04/2014 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P6:** TRUE COPY OF THE ORDER DATED 04/11/2014 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P7:** TRUE COPY OF THE ORDER IN A.T.A.NO. 1173 (7) 2014 DATED 19/11/2014.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K.VINOD CHANDRAN, J.

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**W.P(C) Nos.33975 of 2014,
34643 of 2014,34656 of 2014,
34679 of 2014 & 34897 of 2014**

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Dated this the 29th day of January, 2015

JUDGMENT

The identical petitioner, in all the writ petitions, challenge the recovery initiated, pending appeals before the Tribunal under the Employees Provident Fund and Miscellaneous Provisions Act 1952, (for short, EPF & MP Act 1952).

2. With respect to W.P.(C) Nos.33975 of 2014, 34897 of 2014 and 34656 of 2014, the appeals filed before the appellate authority are numbered and there was an interim order passed by the appellate Tribunal, which is produced as Ext.P7 in the respective writ petitions. For the periods, which were the subject matter in the said appeals, the Tribunal has directed payment of 30% of the amounts for keeping the recovery in abeyance.

3. In the other writ petitions, though appeals were filed from the orders passed by the assessing authority, the same were not numbered and could not be taken up since there is no Presiding Officer, at present, appointed to the appellate Tribunal.

4. I heard the learned Counsel for the petitioner as also the learned Senior Counsel appearing for the respondents. The specific contention raised by the petitioner is that for an earlier period, an order was passed at Ext.P1 (W.P.(C) No.33974 of 2014), including the allowances as entitled to be reckoned for assessing the contribution under the Act. The same was challenged in appeal which resulted in Ext.P3 order being passed by the appellate Tribunal setting aside the order of the assessing authority and remanding the matter for fresh consideration. The petitioner specifically relies on the observation of the Tribunal that there can be no coverage of the allowances, without a reference to the nature of such allowances and a

finding as to such allowances being covered under the EPF & MP Act 1952. The orders for the subsequent years were also passed without looking into the said contention, is the specific argument raised.

5. The learned Senior Counsel however would contend that Ext.P3 order of remand has been complied with and now an order has been passed by the assessing authority, complying with the directions in Ext.P3; but again finding that the allowances are in fact covered under the Act. In such circumstance, it may not be proper for this Court to enter into a consideration of the merits of the issue, especially since appeals are pending before the appropriate Tribunal.

6. With respect to W.P.(C) No. 34897 of 2014, 33975 of 2014 and 34656 of 2014 the appellate Tribunal has exercised discretion and directed payment of 30% of the demand made. This Court does not find any illegality in the same nor would this Court interfere with the discretion

exercised by the appellate Tribunal.

7. W.P.(C) No.34679 of 2014 raises the issue of demand for the period in which earlier a remand was made and a fresh order has been passed, which is also said to be challenged in the appeal. With respect to the said case, it is submitted by the petitioner that at the earlier instance, when an appeal was filed before the appellate Tribunal, the petitioner had deposited 30% of the amount demanded in compliance of an interim order passed therein. In such circumstance, the demand raised, which is the subject matter in W.P.(C) No.34679 of 2014, would stand stayed till the appeal filed before the appellate Tribunal is disposed of; on condition of the earlier order of the appellate Tribunal directing remittance of 30% having been complied with.

8. W.P.(C) No.34643 of 2014 raises the demand for a different period, which order is also challenged in appeal before the appellate Tribunal. The demand, which is the subject matter of the said writ petition also, shall stand

stayed on condition of the petitioner making payment of 30% of the amount so demanded.

9. The petitioner shall pay the entire demand in all the aforesaid cases as directed herein above in four monthly instalments starting on 01.03.2015 and followed up on the first of each succeeding months. If one default is made, the demand would revive and the respondents would be entitled to proceed against the petitioner for recovery of the entire amount. On satisfying the instalments as directed herein, further recovery shall stand stayed till orders are passed in the appeal, on merits.

Sd/-

K.VINOD CHANDRAN, JUDGE

vdv //True Copy//

P.A to Judge