IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 32054 of 2015
&
M.P. Nos. 1 & 2 of 2015

Q Sources Global Consulting Pvt. Ltd.,
rep. by the Director
Mr.Abhiram Krishna,
S-16, "Siddharth",
15th Main Road, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600 032. ... Petitioner

Vs.

1. Regional Provident Fund Commissioner II,
Regional Office, Tambaram,
3, Rajaji Salai,
Chennai - 600 045.

2. The Provident Fund Appellate Tribunal,
Scope Minar, 4th Floor,
Core-2, Laxmi Nagar,
Delhi - 110 092.

3. Branch Manager,
Citi Bank,
163, Anna Salai,
Chennai - 600 002. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent culminating in its communication bearing reference TB/RO/TAM/PDC/53001/59/8f/2015 dated 18.08.2015 issued to the 3rd respondent and quash the same and direct the 1st respondent to refund the sum of Rs.65,41,649.00 collected coercively through the 3rd respondent to the petitioner.

For Petitioner : Ms.L. Maithili for
M/s.L. Maithili Associates

For Respondents : Ms.V.J. Latha for R1

ORDER

The petitioner's company is a Private Limited Company engaged in the business of supplying skilled manpower to various companies in the IT Sector and the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') apply to the petitioner establishment. The PF contributions for the period March, 2010 to January, 2012 could be remitted by the petitioner only subsequently, from 01.01.2015 to 31.01.2015 and therefore, on account of unavoidable delay in making the PF contribution within the statutorily prescribed time limit, the 1st respondent issued a notice dated 22.04.2015 to the petitioner seeking to levy interest under Section 7Q and damages under Section 14B of the Act. Though the petitioner appeared for personal hearing on 15.06.2015 and filed their detailed written submissions on the same date, the 1st respondent rejected the contentions and submissions made on behalf of the petitioner Company and passed an order on 23.07.2015 by which a sum of Rs. 76,81,588/- was slapped as damages on the petitioner and a sum of Rs. 39,79,466/- was ordered to be paid towards interest under Section 7Q of the Act. The said order was received by the petitioner on 25.07.2015. As per Section 7I of the Act read with Rule 7 of Employees' Provident Fund Appellate Tribunal Rules, 1997, the petitioner has got 60 days' time to file an appeal against the order passed under Section 14B of the Act before the Appellate Tribunal, though there is no provision for filing an appeal questioning the interest levied under Section 7Q of the Act. However, according to the before the expiry of the limitation period of 60 days to prefer an appeal, an attachment order of the petitioner's bank account was issued on 18.08.2015 by the 1st respondent. Challenging the same and seeking refund of a sum of Rs.65,41,649.00 collected through the 3rd respondent, the petitioner is before this Court.

2. Heard Ms. R. Mythili, learned counsel for the petitioner and Ms.V.J. Latha, learned counsel for the 1st respondent.

3. The questions to be decided are two-fold, namely, whether the composite order consisting of damages and interest is appealable and whether the 1st respondent has got the power to take consequent action for non-payment of damages and interest, even before the expiry of the limitation period.

4. As far as the first question regarding the filing of appeal against the composite order dated 23.07.2015 consisting of damages as well as the component of interest is concerned, the Honourable Supreme Court, in the judgment dated

18.10.2013 rendered in Arcot Textile Mills Ltd. V. Regional Provident Fund Commissioner (In Civil Appeal No. 9488 of 2013) has held that a composite order is amenable to appeal under Section 7I of the Act and the relevant portion at paragraph No.18 is usefully extracted as follows:

> "18. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability, the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q, the same is not appealable."

As held by the Honourable Supreme Court, the appeal is maintainable under Section 7I of the Act against a composite order like the one passed on 23.07.2015 in this case. Admittedly, the petitioner has already preferred an appeal and the same is pending before the 2nd respondent. Therefore, the 1st respondent should have waited till the expiry of the limitation period before passing the attachment order.

5. With regard to the second question, the composite order was passed on 23.07.2015 and it is said to have been served on the petitioner on 25.07.2015. If it was served on 25.07.2015, then the period of 60 days ends on 26.09.2015, as per Section 7I of the Act. Whereas the 1st respondent, in haste, attached the bank account of the petitioner on 18.08.2015 itself. It is very evident that when time is available for filing an appeal by the petitioner upto 26.09.2015, the 1st respondent has attached the bank account of the petitioner even before the expiry of the said period and therefore, the impugned order is not sustainable and it is liable to be quashed.

6. As far as the question of refund of a sum of Rs.65,41,649.00 collected coercively through the 3rd respondent to the petitioner is concerned, the learned counsel for the 1st respondent would contend that the petitioner is not entitled to

any refund; The petitioner has not even complied with the condition of pre-deposit while filing the appeal and therefore, whatever has been recovered from the petitioner is well within the purview of the Act. However, when an appeal along with the stay application, challenging the composite order levying damages and interest is pending before the statutory appellate authority, the action of the 1st respondent in ordering recovery even before the expiry of the limitation period would tantamount to denying the right of the petitioner to file an appeal. Further, as per the third proviso to Rule 7(2) of EPF Appellate Tribunal Rules, 1997, the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O of the Act and therefore, the question of pre-deposit is yet to be decided by the Tribunal.

7. In the light of the above, when law prescribes certain procedures, the same will have to be complied with scrupulously. In this case, it has not been done. Therefore, the writ petition is allowed and the 1st respondent is directed to refund the entire sum of Rs.65,41,649.00 which has been collected through the 3rd respondent. However, in the event of any order being passed, as per the third proviso to Rule 7(2) of the aforesaid Rules, the same has to be necessarily complied with by the petitioner failing which the legal consequences would follow. No costs. Connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv
To

1. The Regional Provident Fund Commissioner II,
Regional Office, Tambaram,
3, Rajaji Salai, Chennai - 600 045.

2. The Provident Fund Appellate Tribunal,
Scope Minar, 4th Floor,
Core-2, Laxmi Nagar, Delhi - 110 092.

+1cc to Ms.V.J. Latha, Advocate, S.R.No.43421
+1cc to M/s.L. Maithili Associates, Advocate, S.R.No.43402

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RSY(CO)
CA(22/08/2016)