IN THE HIGH COURT OF JUDICATUARE AT MADRAS

DATED: 01-07-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.22802 of 2016

and

WMP No.19480 of 2016

M/s.Gokaldas Exports Limited
Rep.by its Vice Chairman &
Managing /Director P.Ramababu,
Plot No.6/1, Phase II, MEPZ-SEZ,
Tambaram,
Chennai - 600 045. ...Petitioner

Vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Bengaluru Bench, Bengaluru.

2.Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organisatioin,
Regional Office, Tambaram,
Rajaji Salai, Tambaram,
Chennai - 600 045. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to entertain the petitioner's appeal challenging the order of the 2nd respondent dated 16.11.2015 in respect of determination of EDLI contribution of Rs.13,17,517/- and consequently forbearing the 2nd respondent from claiming interest and damages pursuant to show cause notice dated 15.06.2016 in respect of EDLI contribution of Rs.13,17,517/- till the disposal of the appeal.

For Petitioner : Mr.S.Ravindran

For Respondents : Mrs.V.J.Latha,
for R2
R1 Tribunal

O R D E R

The petitioner is a company covered under the provisions of EPF and MP Act and for claiming exemption for EDLI contribution, it took LIC premium towards EDLI contribution. In respect of conveyance allowance, the petitioner denied its liability. By order dated 16.11.2015, the second respondent directed the petitioner to pay a sum of Rs.23,23,222/- towards EDLI contribution and conveyance allowance. The petitioner, by letter dated 10.12.2015 forwarded cheque for a sum of Rs.10,05,705/- towards conveyance allowance contribution.

2. On 10.12.2015, the petitioner also paid a sum of Rs.13,17,517/- under protest towards EDLI contribution and was taking steps with the second respondent to grant exemption for EDLI contribution for the period July 2008 to July 2015. In view of that, the petitioner was under the impression that till the matter is resolved, the second respondent would not make any claim towards interest or damages on EDLI contribution. While so, by show cause notice dated 15.06.2016, the 2nd respondent claimed interest and damages towards conveyance allowance and EDLI contribution.

3. Since the liability is sought to be slapped on the petitioner by virtue of the order dated 16.11.2015, the petitioner is entitled to challenge the said order under Rule 7 (2) of the EPF Appellate Tribunal (Procedure) Rules and the same is required to be filed within sixty (60) days of the receipt of the said order, before the first respondent with a grace period of 60 days. The petitioner received the notice dated 16.11.2015 on 20.11.2015 and deposited a sum of Rs.13,17,517/- on 10.12.2015 with the second respondent towards EDLI contribution which is a pre-condition for challenging the order dated 16.11.2015.

4. Though the pre-condition as per the rules has been complied with by the petitioner, they had not been permitted to file appeal, as it is sought to be filed, beyond the period of limitation, i.e. 60 + 60 = 120 days, with a delay of 161 days. Therefore the petitioner has approached this court seeking writ of mandamus directing the first respondent to entertain the appeal.

5. Heard Mr.S.Ravindran, learned counsel appearing for the petitioner and Mrs.V.J.Latha, learned counsel appearing for the 2nd respondent.

6. As per Rule 7 (1) of the EPF Appellate Tribunal (Procedure) Rules, the petitioner is entitled to challenge the order dated 16.11.2015, on deposit of the entire amount as a pre-condition. In the case on hand, the order dated 16.11.2015 was served upon the petitioner on 20.11.2015 and within a period of thirty (30) days, the petitioner deposited the entire amount of Rs.13,17,517/- towards EDLI contribution and therefore the obligation caste upon the petitioner has been discharged or the rule has been complied with for filing of appeal.

7. It is strict law, that without any statutory deposit, if any appeal is filed, it is not an appeal in the eye of law. In the case on hand, the pre-condition has been complied with by the petitioner by depositing the amount and there was some delay in filing the appeal papers. Substantial compliance has been made out by the petitioner except the paper work and therefore, the limitation period, as prescribed under Rule 7 (2) of the EPF Appellate Tribunal (Procedure) Rules is deemed to have been complied with, as the amount was deposited within 21 days of receipt of the order of demand.

8. Rules are handmade for justice. What is required to be seen is that whether there has been compliance of the statutory requirement. As the petitioner has already complied with the condition stipulated under the Rule, there would not be any impediment on the part of the first respondent to receive the appeal papers and entertain the same and decide the matter on merits.

9. In view of the above said circumstances, the first respondent is directed to entertain the appeal papers to be filed by the petitioner, within a period of one week from the date of receipt of a copy of this order and dispose of the same, after issuing notice to the second respondent, within a further period of two weeks thereafter.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

rgr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Bengaluru Bench,
Bengaluru.

2.Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organisatioin,
Regional Office, Tambaram,
Rajaji Salai, Tambaram,
Chennai - 600 045.

+ 1 cc to Mr.S.Ravindran to Advocate Sr 37153

KR/6/7/16