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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20th October, 2016

+ **W.P.(C) 9057/2016 & CM Nos. 36623-26/2016 & 38784-85/2016**

HYTHRO POWER CORPORATION LIMITEDPetitioner

Through: Mr.Sanath Kumar, Senior Advocate
with Mr. Rohit Yadav, Advocate.

Versus

REGIONAL PROVIDENT FUND COMMISSIONERRespondent

Through: Mr. R.C. Chawla, Mr. Charanjeet
Singh and Mr. D. Rajeshwar Rao,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The petitioner impugns orders dated 28.01.2016 and 30.03.2016 passed by the Employees Provident Fund Appellate Tribunal (for short 'Tribunal') in ATA No. 96(4)2016. By the first order dated 28.01.2016, the quantum of pre-deposit was reduced from 75% to 50% by the Tribunal with a direction to deposit the same within 60 days therefrom. In the latter order of 30.03.2016, the petitioner's appeal was dismissed by the Tribunal observing that the pre-deposit had not been made till that date.

2. Mr. Sanath Kumar, the learned Senior Advocate for the petitioner submits that there was no occasion for the petitioner to make the said pre-deposit since the period for which the assessment was done, is beyond the

statutory period of review. In support of his contention, he relies upon clause 10 of the Circular dated 30.11.2012, which reads as under:-

“10. LIMITATION FOR INVESTIGATION/ INQUIRY- It has been observed that open ended assessment inquiries and investigations serve no real purpose. Moreover such inquiries often do not result in identification of beneficiaries and only tend to harass the employers and establishments. It is accordingly directed that no inquiry or investigation shall ordinarily go beyond seven years, i.e., it shall cover the period of default not exceeding preceding seven financial years. It is to be ensured that compliance actions are initiated in time and there is normally no reason for extending the scope of investigation and assessment enquiry beyond previous seven financial years.”

3. The learned counsel submits that what needs to be examined is the basis on which the assessment was either opened or conducted for a period beyond seven financial years. He submits that a copy of the complaint which forms the basis of the order has not been given to them. However, it is not denied that the notice of the proceedings was served upon the petitioner.

4. The learned counsel seeks to rely upon certain documents to show that the petitioner had been making due statutory compliances. However, upon a specific query put to the learned Senior Advocate as to whether these documents were submitted or put before the Assessing Authority or before the Tribunal, the answer is in the negative.

5. The learned Senior Counsel submits that all the relevant information apropos the petitioner's returns were already available with the RPFC. Therefore, those documents ought to have been taken into consideration by

the latter. He refers to the Enforcement Officer's Report (at page 112 of the writ petition) to show that the report was based on surmises. The learned counsel impugns the very imposition of pre-deposit of 50% and the subsequent dismissal of the appeal.

6. It is not in dispute that the amount assessed as payable by the petitioner is about Rs.48 crores. Mr.Sanat Kumar submits that at best the petitioner would be liable to make a contribution of 50% of the said amount. The Court observes that the pre-deposit has already been reduced from 75 % to 50% by the Tribunal vide order dated 28.01.2016. Therefore, without any documents or facts being on record to show that the said assessment was wrong, there is no reason or occasion to reduce the said pre-deposit further. The petitioner had chosen not to participate fully or to present records and documents before the Assessing Authority/RPFC. The petitioner also did not pay any monies whatsoever after the order of the Appellate Tribunal. Insofar as the petitioner has not paid the said amount of 50% despite an opportunity having been granted to it, the Court does not find any reason to look into some records which are sought to be produced in the writ jurisdiction for the first time. Records which in the first instance, need to be looked into by the appropriate authority i.e. by the RPFC and then in appeal by the EPF Appellate Tribunal, should not be produced at this stage unless an exceptional case is made out for the same. No such case is made out for admitting the same in the writ petition. There is no occasion for this Court to look into the records which were never produced in the earlier proceedings. Since the arguments sought to be raised by the petitioner are primarily based upon facts, which were never raised in the earlier proceedings, the same are not tenable in the writ jurisdiction.

7. The order dated 28.01.2016 reducing the pre-deposit from 75% to 50% was neither impugned nor was its modification sought by the petitioner. The period of payment of the pre-deposit within 60 days from the date of the order of 28.01.2016 was not complied with. This writ petition has been preferred about eight months after the said order, without any reasonable justification. Therefore, there is neither any occasion nor any basis for the petitioner to challenge the same in the writ jurisdiction.

8. In the circumstances, the Court finds no reason to interfere with the orders dated 28.01.2016 and 30.03.2016. The petition is without merits.

9. Accordingly, the writ petition alongwith pending applications are dismissed.

(NAJMI WAZIRI)
JUDGE

OCTOBER 20, 2016
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