IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 3311 of 2012

Endurance Technologies Limited
(Erstwhile M/s. Endurance Systems (India) Private Limited),
K-120, MIDC Industrial Area, Waluj, Aurangabad – 431136
Through its Authorised Signatory.

...PETITIONER

VERSUS

1. The Union of India,
through the Standing Counsel for the Union of India,
Bombay High Court, Bench at Aurangabad.

2. The Regional Provident Fund Commissioner,
Sub-Regional Office, Bhavishya Nidhi Bhavan,
Plot No. 2, Town Centre, Commercial Area,
CIDCO, New Aurangabad (MH) - 431 029

...RESPONDENTS

Mr Y.R. Marlapalle, Advocate for petitioner
Mr Alok Sharma, Advocate for respondents

CORAM : NITIN W. SAMBRE, J.

DATE : 31st October, 2017

ORAL ORDER :

The petitioner-company, registered under the Company Act, started its first establishment at Sector E, Plot No. 92 in the year 1996. It was allotted Establishment Code No. MH/AB/80866 for depositing the Provident Fund Contributions.

2. The petitioner underwent expansion and in Sector K, Plot No. 120 in November 1999 another plant was started. The petitioner continued to pay the Provident Fund Contributions of employees of new plant against the existing Code No. MH/AB/80866 i.e. old code.

3. On May 25, 2001, in response to prayer of the petitioner for allotment of Sub-Code No. for factory at Plot No. 120 in Sector K, a Sub-Code No. was allotted, viz. MH/AB/80866-A. As such, after the new Code was allotted, the contribution towards Provident Fund for the employees, working in plant at Plot No. K-120 was deposited against the new Code.

4. Petitioner received a notice on December 21, 2006, stating that while reconciling Annual Account for the year 2000-2001 for the Sub-Code, viz. MH/AB/80866-A, short remittance was noticed and, as such, was called upon to pay the amount mentioned in the said notice, with threat of action for recovery under section 8-B to 8-G of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as “The Act” for the sake of brevity).

5. The petitioner in the wake of above referred factual

matrix, submitted detail explanation on 24th January 2007 to the respondent-Authority.

6. A fresh notice under Section 7-A of the Act came to be issued to the petitioner on March 6, 2007, noticing certain short remittance for a period from 1st November 1999 to 28th February 2007 as against Sub-Code No. MH/AB/80866-A, as could be found reference in the said communication. Petitioner was called upon to produce certain documents by the Assistant Provident Fund Commissioner, to which petitioner responded positively and further requested that so far as production of cash book, voucher, balance sheet, Auditors report and profit & loss account being voluminous data and more huge, it will be difficult to produce the same before the Authority and requested that the Authority should depute official person for verification of these records. Perhaps, the said request appears to be in the backdrop of the fact that the Enforcement Officer for the Department, who is supposed to draw the report, is required to look into the record qua petitioner maintained by the Department and also the accounts & material produced by the petitioner at the time of evaluating the claim for short remittance of the Provident Fund.

7. The respondent-Authority rejected said request as is apparent from the note sheet dated March 12, 2007 and directed the petitioner to submit balance sheet which was duly complied by the petitioner. The petitioner not only produced payment register from 1st November 1999 to 1st February 2002 but also assisted the Authority during the course of hearing by producing Balance sheet/Auditors Report, P & L account for a period from 1999 to 2006. The Authority by accepting report of the Enforcement Officer, who has inspected the record of petitioner, which was produced, directed petitioner to pay amount of Rs. 8,32,838/- with observation that there was short payment of Rs. 6,06,504/- for a period from November 1999 to February 2001. The Authority also levied administrative and other charges.

8. The petitioner preferred an appeal before the National Appellate Tribunal at New Delhi being Appeal No. 822(9) of 2007. Alongwith said appeal, the petitioner has produced the various communications as is apparent from the list of the documents. The Appellate Authority without looking into said documents, has passed an order on October 15th, 2010, thereby observing that no documents were filed by the petitioner in support of the claim. The Appellate Tribunal then observed that on verification of the record, it was found that the payment with respect to 141 employees was

made in principal Code No. 80866 and there was short payment of Rs. 6,06,504/- during the period from November 1999 to February 2001. As such, this petition.

9. In the aforesaid factual backdrop, the learned Counsel for the petitioner would urge that the entire act on the part of the respondent-Authority is contrary to the schemes of the Central Act, as it was duty of the respondent-Authorities, and also that of the Enforcement Officer to reconcile the record from the documents, as were produced by the petitioner. According to him, there is no statutory embargo to pay contribution against the old Code No. MH/AB/80866 of the new plant that was established at Sector K Plot No. 120. According to him, the Authority has rather proceeded to accept contribution without any demand and when it needs to reconcile accounts, the Authorities are intentionally avoiding their statutory duty and saddling with the unnecessary and uncalled monetary liability on the petitioner. According to him, the request on the part of the present petitioner for verification of its record by the Authorities was rejected without any justifiable reasons and the material that was produced on the record was not appreciated by the Enforcement Officer, whose report was blindly accepted as gospel truth. According to him, report of the Enforcement Officer, which

was found to be basis for passing the order saddling the liability, is without considering the other documents as were sought to be referred to by the petitioner, vide its communication dated 10th March 2007. The petitioner submits that the petitioner has tried to maintain complete transparency and has shown bonafides offering verification of its entire record, for the inspection and reconciliation of the dues which were already paid. However, in arbitrary manner, the Authority has proceeded to pass the order impugned.

10. He would then submit that the Appellate Tribunal while passing order impugned has lost sight of the documents and the aforesaid factual matrix viz. the intention of the petitioner to produce all the documents and refusal by the Authority to look into the same for reconciling the entire claim. According to him, there is no statement in the reply so as to demonstrate that the documents referred to at page No. 68, which are produced alongwith the appeal, were not, in fact, produced before the Appellate Tribunal. The Appellate Tribunal has passed the cryptic order without considering the claim of the petitioner for depositing the contribution against the first Code for the period for which the recovery of short payment is ordered against the petitioner. He submits that both the orders, as such, are not sustainable.

11. Per contra, learned Counsel for the respondents, would urge that the orders are in tune with the provisions of the Central Statute. According to him, the report of the Enforcement Officer was very much taken into account by the Authority while determining the short payment of contribution. He would then urge that the mess of making of payment of two plants against old code is created by the petitioner and it is for them to reconcile the same and satisfy the Authority, which they have failed to. He would invite attention of this Court to the submissions made in the reply that the respondent-Authority maintained the record in regard to the employees and not against the employer for the payment made. He submits that in extra ordinary jurisdiction, the Court should be slow in interfering into concurrent findings recorded by both the Courts.

12. Considered the rival claims. Undisputed fact, as could be borne out of record, is that Code No. MH/AB/80866 came to be allotted to the petitioner in the year 1996 as against the plant (old plant) which was made operational on Plot No. 92 in Sector E at Aurangabad.

13. The petitioner continued to deposit the contribution of the employees from the said plant against the said Code.

14. The petitioner established the new plant on Plot No. 120 in Sector K in November 1999 and continued to deposit amount of contribution against the existing Code that was already allotted, referred supra.

15. The petitioner was allotted Sub-Code for the plant on Plot No. 120 in Sector K on May 25, 2001 being Code No. MH/AB/80866-A.

16. From the aforesaid backdrop, it could be inferred that allotment of main Code in 1996 and Sub-Code in 2001, is not a matter of dispute. It is also not disputed by the respondent Authorities that the petitioner has paid the amount of contribution till the new Sub-Code No. was allotted against old Code No. viz. MH/AB/80866. It is for the first time, the respondent Authorities noticed short payment and issued communication to that effect on December 21, 2006, which was duly responded by the petitioner. The petitioner in its response has informed the respondent-Authority that the new plant has started its operation from 1st November 1999 and the Provident Fund Contribution under the Act was paid through the code, which was already allotted to it. It is also pointed out that new Code was allotted to it on 25th May 2001. The petitioner denied its liability or the responsibility of short payment of contribution that was earlier made and tried to substantiate the same based on

certain communications and the accounts documents.

17. The Authority since was not satisfied with the same caused notice under section 7-A of the Act, which was responded by communication dated 10th March 2007, and the petitioner reiterated its request that the respondent-Authority should visit the petitioner establishment for verification of Cash Book, Voucher, Balance Sheet, Auditors Report, Profit & Loss Accounts, as the said documents were not produced before the Authority for the reason of huge and bulky record. The petitioner thereafter produced Payment Register, Balance Sheets, Audit Report, P & L account, based on which the Enforcement Officer prepared a report without inspecting the original record of petitioner establishment. The Authority rejected the prayer for verification of the record of petitioner establishments by deputing responsible Officer and directed the petitioner to produce Balance Sheets. The petitioner thereafter again produced certain documents on 5th April 2007. Respondent Authority accepting the report of the Enforcement Officer, which is without verifying documents, as prayed for, proceeded to pass an order directing recovery of amount of Rs. 8,32,838/- alongwith interest. From the said order, it could be noticed that but for reference to the report of the Enforcement Officer, the documents which were produced by the petitioner, were not at all

referred to, (rather, the respondent-Authority has proceeded to reject the request of the petitioner for deputing Officer for inspection of huge, voluminous record) and reconciled so as to ascertain the payment of contribution of Provident Fund against the Code that was already allotted. The Assistant Provident Fund Commissioner, in a para only referred to said provisions and proceeded to pass order of saddling liability on the petitioner. The least that was expected of the respondent was to consider the payment that was already made against Code No. MH/AB/80866 in regard to the contribution of the Provident Fund of employees working in the plant which is made operational at Sector K on Plot No. 120 for the period for which liability was imposed.

18. It is not brought to my notice from the statutory provisions as to in manner and mode the embargo could be considered of the right of the party who has already deposited contribution against the already existing Code No. No provision in the Act and rules framed thereunder are brought to my notice so as to draw an inference that the payment of contribution already made cannot be reconciled and petitioner must pay the contribution against the new Sub-Code afresh.

19. The appeal of the petitioner was turned down by the Appellate Tribunal in a similar manner by more cryptic order though the petitioner has produced 12 documents for reference to the Appellate Tribunal. However, the Tribunal has gone to observe on record that no documents are produced so as to substantiate the claim of the petitioner that the assessment ordered under section 7-A for the period from November 1999 to February 2001 against the petitioner establishment was incorrect. Both the Authorities i.e. the first Authority and the Appellate Tribunal have not touched the documents and the admitted payments received by the respondent-Authority towards contribution.

20. The approach on the part of respondent-Authority appears to be arbitrary. The orders, which are impugned in the petition, lacks any reasons, much less, transparency, when the payment of contribution against old Code No. for the same period is not in dispute. The respondent-Authority while passing order after conducting alleged inquiry under Section 7-A of the Act has proceeded as if it is a profiteering institution, without considering and dealing with the record produced before it.

21. In the aforesaid backdrop, in my opinion, the order

impugned passed by the respondent-Authority and also that of Appellate Tribunal are not sustainable and are accordingly quashed and set aside. The petition stands allowed in terms of Prayer Clause 'C'.

22. The respondent-Authority viz. Assistant Provident Fund Commissioner is directed to consider payments, which are already made by the petitioner against old Code No. MH/AB/80866 based on the record viz. the Cash Book, Vouchers, Balance Sheets, Auditors Report, Profit & Loss Accounts, by reconciling the payment of contribution already made. The authority shall conduct fresh inquiry under Section 7-A of the Act, keeping in mind the aforesaid observations, if required by deputing Enforcement Officer for inspection of the said record of the petitioner-establishment as it is not in dispute that respondents are recovering administrative charges from the petitioner establishment.

23. Learned Counsel for petitioner assures this Court that it shall extend all required assistance for reconciling the record to establish the amount of contribution paid for the period for which liability is saddled.

24. Respondent-Authority shall be at liberty to pass fresh

reasoned order after considering the submissions of the petitioner. The respondent-Authority shall also provide copy of the report, if any, to be made by the Enforcement Officer, to rely upon for passing a fresh order, to the petitioner.

25. The Writ Petition, as such, stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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