

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.14518 of 2008

Sealine Forwarders P.Ltd.,
Old, No.21, New No.12,
Second Line Beach,
Chennai 600 001.
rep.by its Director
B.Ramesh

... Petitioner

Vs.

The Assistant Provident Fund
Commissioner, (Recy)
Fund Commissioner
No.37, Royapettai High Road
Chennai 600 014.

...Respondent

PRAYER: Writ Petitions filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent herein culminating in the notice dated 21.05.2008 and bearing Ref.No.CHN /Recy /TN /6663 /Regl / 2008 and quash the same and direct the respondent to revise the Assessment for the period 03/2001 to 02/2002 and subsequent periods from 04/2002 to 05/2008 based on the representation and records produced by the petitioner herein by their letters dated 17.03.2008 and 22.05.2008.

For Petitioner : Mrs.SriPrada Prabhakar for
: Mr.Aravind Subramaniam
For Respondent : Mr.T.R.Sundaram

ORDER

The order passed under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (in short "the Act ") is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the company though in existence, no employees are working as on today and the learned counsel for the petitioner is unable to get further instructions in this regard. However, the learned counsel appearing on behalf of the respondent made a submission that the proceeding under Section 7A of the Act was initiated for the period from 03/2001 to 02/2002 and a sum of Rs.90,495/- was determined by proceedings dated 21.6.02/03.07.02. Aggrieved against the said orders, the petitioner filed a writ petition No.3972 of 2003 and this Court granted an interim stay on 07.02.2003, on the condition that the petitioner has to pay Rs.45,000/-. However, the petitioner remitted only for a sum of Rs.15,000/- and miserably failed to pay the second and third instalments, and thereby committing contempt of order passed by this Court.

3. On 14.08.2003, this Court has dismissed the above writ petition with liberty to file an appeal before the Employees Provident Fund Appellate Tribunal. However, the petitioner deliberately omitted the direction of the Hon'ble High Court and did not file any appeal against the impugned order till date. The petitioner has filed another writ petition No.9276 of 2003 against the balance dues of Rs.1,20,241.45 for the default period for 11/99 to 02/01 in subtraction of Rs.55,000/-. The Hon'ble High Court by order dated 20.08.2005 disposed off the writ petition, permitting the petitioner to pay the entire amount in four equal monthly instalments, with further direction that if the petitioner commits default of any one of the payments, it is open to the respondent to recover the entire amount in accordance with law.

4. Aggrieved by this order, once again the writ petitioner has preferred an Appeal No.2039 of 2005 and obtained an order of interim stay on 18.10.2005 and the Writ Appeal was disposed of on 20.02.2008, with a direction to the petitioner/appellant to approach the respondent with an explanation to the demand notice within a period of four weeks and the respondent shall pass appropriate an orders, after giving necessary opportunities to the petitioner/appellant with regard to the liability in twelve weeks.

5. The appellant did not produce necessary documents to substantiate his contentions, as such, the respondent issued a letter dated 21.05.2008, on the basis of the material information available on record of the respondent in compliance

with the order of Hon'ble High Court dated 20.02.2008. Thereafter, the writ petitioner has filed the present Writ Petition No.14518 of 2008 for Certiorarified Mandamus to quash the order passed by the respondents.

6. The sequence of events states that the writ petitioner has filed writ petition only to prolong the payment of statutory dues to the respondent. The writ petitioner, taking advantage of the interim order, have miserably failed even to comply with the interim direction granted by this Court, to pay the dues by way of monthly instalments. Thus, the writ petitioner has abused the process of Court to gain time without even complying with the orders of this Court. Under these circumstances, this Court is not inclined to consider the case of the writ petitioner on merits.

7. This apart, there is an appeal under the Employees Provident Fund & Miscellaneous Provisions Act. Inspite of the specific direction from this Court, in W.P.No.3972 of 2003, the writ petitioner has not preferred any appeal before the tribunal.

8. Thus, this Court is of the firm opinion that the writ petition deserves no further consideration on merits and grounds raised in this writ petition.

9. Accordingly, the writ petition stands dismissed and the respondents are at a liberty to recover all the statutory dues as per Act and Rules. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

dna

To

The Assistant Provident Fund
Commissioner, (Recy)
Fund Commissioner
No.37, Royapettai High Road
Chennai 600 014.

+1cc to Mr.T.R.SUNDARAM, Advocate, S.R.No. 77568

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TR(06/12/2017)



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