IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.34164 of 2017

Karpaga Ganapathi Textile Process Private Limited
rep. by its Director- Mr.N.K.Karthikeyan,
No.21 & 23, 6th Cross Street,
College Road, Tirupur-641 602. .. Petitioner

-vs-

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
S.J.Plaza, Swarnapuri, Salem-636 6001. .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in No.CB/SL/70282/Recovery/CP-25/ERD 2017 dated 28.11.2017 and quash the same.

For Petitioner :: Mr.S.Ezhil Raj
For Respondents :: ...

ORDER

The Writ Petition has been directed against the impugned order dated 28.11.2017 passed by the respondent wherein the Assistant Provident Fund Commissioner and Recovery Officer has called upon the petitioner to pay a sum of Rs.1,50,896/- and Rs.550/- for costs of recovery charges towards PD for the period from 07/2006 to 03/2010 in respect of M/s.Karpaga Ganapathy Textile Processors Limited, Plot No.H-11, SIDCO Industrial Growth Centre, Perundurai, Erode-638 052 in respect of Certificate No.CBSI M 5686 dated 08.05.2017 drawn up by the Authorised Officer, EPFO, Salem under Section 8 B of the Act and if the petitioner has not come forward to pay the said amount, he has been directed to appear before the undersigned with all the movable/immovable properties details along with Balance Sheet on 17.12.2017 at 11 a.m. and to show cause as to why he should not be arrested and committed to prison in execution of the said certificate.

2. Learned Counsel for the petitioner submitted that when the contribution to the petitioner's side was paid in spite of economic recession faced by the petitioner company, only with regard to non-payment of damages, the impugned order has been passed. Therefore, the same is liable to be set aside. The

learned Counsel further submitted that the Central Board may reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme. The learned Counsel also submitted that as against the original order, the petitioner preferred an appeal before the Appellate Authority. But the appellate authority also rejected the request to stay the operation of the impugned order citing the reason that the Show Cause Notice in consequence of Recovery Proceedings under Section 8B is not appealable to their jurisdiction as per Section 7-1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. When the petitioner's company is engaged in Textile Processing Business by employing employees, it is the bounden duty on the part of the employer to make their contributions towards EPF promptly. In the present case, the employees contributions have been deducted from the salary of the employees regularly. While doing so, it is not known why the employer has failed to contribute their contributions.

4. In reply to the same, the learned Counsel for the petitioner submitted that the contributions of the employer have been paid, but, in view of the sickness faced by the petitioner's company, they were not able to make the contributions in time. However, the total contributions have been made belatedly. But, for the delay in making the contributions, the damages have not been paid. Therefore, the recovery order is liable to be set aside.

5. I do not find any merit in the impugned order of the respondent dated 28.11.2017. Since there has been a delay in making the contributions towards EPF, the petitioner cannot escape from the payment of damages which is quantified at Rs.1,50,896/- and Rs.550/- for the costs of recovery towards PD for the period from 07/2006 to 03/2010. Therefore, this Court directs the petitioner to clear the above said amounts by way of three instalments.

6. With the above observation and direction, the Writ Petition is disposed of. It is made clear that if the petitioner commits any default in making the aforesaid 3 instalments, it is open to the respondent to proceed against them in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

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SUB ASST. REGISTRAR

To

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
S.J.Plaza, Swarnapuri, Salem-636 6001.

W.P.No.34164 of 2017

JK 30/01/18