IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07-11-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20301 of 2011
And
M.P.No.1 of 2011

Assistant Provident Fund Commissioner (PDC),
Employees' Provident Funds Organisation,
No.37, Royapettah High Road,
Chennai-600 014.
.. Petitioner

vs.

1.M/s.V.D.Swamy & Co. Ltd.,
41, Cathedral Road,
Chennai-86.

2.Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the second respondent dated 15.04.2011 in Ref.No.ATA No.49 (13) 2008 and quash the order passed therein and consequently, direct the first respondent to pay the damages and interest as claimed by the petitioner-Organisation.

For Petitioner	:	Mr.T.R.Sundaram
For Respondent-1	:	Ms.D.Veda
For Respondent-2	:	Tribunal

O R D E R

The order dated 15.04.2011 passed by the Employees Provident Fund Appellate Tribunal-second respondent herein, in reference No.ATA No.49 (13) 2008, is under challenge in the present writ petition.

2. The writ petitioner is the Assistant Provident Fund Commissioner (PDC) Employees' Provident Fund Organisation.

3. The learned counsel appearing on behalf of the writ petitioner states that the first respondent-Company is a covered Establishment under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

4. On account of belated payment in respect of the contributions, the writ petitioner authority issued a show cause notice for levy of damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and simple interest under Section 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, was also issued. Personal hearing was made on 25.10.2007 and a levy order was issued by the first respondent on the same day i.e., on 25.10.2007.

5. The first respondent-Company preferred an appeal before the Appellate Tribunal, challenging the order of levy. The Tribunal remanded the matter back to the writ petitioner-authority to assess the liability only at the rate of 17% inclusive of interest.

6. The learned counsel appearing on behalf of the first respondent made a submission that the first respondent-Company is suffering from financial loss and the financial loss established before the Tribunal, which was considered by the Tribunal and an order was passed. There is no infirmity under Section 7-L of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The Tribunal is empowered to remand the matter and therefore, thee is no infirmity as such.

7. This Court is of the considered opinion that as per the Proviso Clause (2) to Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the grant of waiver is the power granted to the Tribunal. However, while exercising such discretionary power provided under the Proviso Clause, the Tribunal must rely the reasons and more specifically the proviso clause itself contemplates certain conditions for the purpose of grant of waiver. If it is a sick Company, the same is to be declared. 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 Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

8. Thus, it must be a sick industry as per the conditions stipulated in the Proviso to Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. It is not as if the power of discretion to grant waiver can never be exercised mechanically and in a routine manner. Therefore, the Tribunal cannot grant waiver at its own choice. It is not as if a company is able to produce some documents to establish that the company is suffering from financial loss. Mere financial loss may not be a ground with regard to the waiver of the company and the company may sustain loss for some period and may earn profit during further period.

9. These are all the aspects which cannot be gone into without reference to the conditions stipulated in the Proviso Clause to Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Thus, the Tribunal cannot grant waiver in a mechanical manner. It is to be verified whether the company was declared as a sick industry with reference to the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which is enumerated in the Proviso Clause to Section 14-B of the Act.

10. As far as the present writ petition is concerned, the Tribunal has decided to remand the matter back to the Employees Provident Fund Authorities for rejection. While doing so, the Tribunal cannot issue a further direction to assess the dues at the rate of 17% inclusive of interest. If such a condition is imposed, then the very purpose of remand is defeated. The very purpose of remanding the matter back to the authority is to adjudicate all the issues afresh, take a decision and pass appropriate orders. If such being the purport of Section 7-L of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, then the Tribunal cannot issue further direction to the authorities competent to assess the dues at the rate of 17% inclusive of interest, which means deciding the matter on merits while remanding the matter, decision on merits cannot be taken at all. Once the Tribunal arrives a conclusion that it is a fit case for remand, then all the issues must be left open for adjudication, unless there is some exceptional circumstances, wherein certain directions are required.

11. The learned counsel for the first respondent states that as per Para 32-B of the Employees Provident Funds Scheme, 1952, a Company is entitled for waiver and all such grounds shall be taken before the authorities competent while adjudicating the matter. Thus, all these aspects are to be considered by the authorities competent.

12. Under these circumstances, the order passed by the Appellate Tribunal, remanding the matter back to the Employees Provident Fund Authorities, is upheld. However, the direction issued to assess the dues at the rate of 17% inclusive of interest stands quashed. The Employees Provident Fund Authorities competent are directed to reconsider all the issues afresh, affording opportunity to the parties concerned and decide the matter as expeditiously as possible and by following the procedures contemplated.

13. In this view of the matter, the writ petition stands partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

Svn
To

1.Assistant Provident Fund Commissioner (PDC),
Employees' Provident Funds Organisation,
No.37, Royapettah High Road,
Chennai-600 014.

2.Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

+1cc to Mr.T.R.Sundaram , Advocate SR.No. 95294
+1cc to Mr.Meenakshi sundaram , Advocate SR.No. 93196

WP No.20301 of 2011

A.SK(29/11/2019)
A.SK(17/12/2019)