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.21147 OF 2011

Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office, No.3, Rajaji Salai,
Tambaram,
Chennai-600 045.
.. Petitioner

vs.

1. M/s.Hivelm Industries,
   (Unit of Digvision Electronics),
   A5&6 Guindy Industrial Estate,
   Guindy, Chennai-600 032.

2. Presiding Officer,
   Employees Provident Funds Appellate Tribunal,
   7th Floor, 60, Skylark Buildings,
   Nehru Palace,
   New Delhi - 110 019.
.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the second respondent related to order passed in ATA No.351 (13) 2001 dated 31.08.2010 and quash the order passed therein and quash the same

For Petitioner	:	Mr.R.Visnu for Mr.K.Ramu
For Respondent-1	:	Mr.M.R.Dharanichander
For Respondent-2	:	Tribunal

O R D E R

The order dated 31.08.2010 passed by the Employees Provident Fund Appellate Tribunal-second respondent herein, in reference No.ATA No.351 (13) 2001, is under challenge in the present writ petition.

2. The writ petitioner is the Regional Provident Fund Commissioner 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 24.04.2001 and subsequently, a levy order was issued by the first respondent.

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 22% 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 22% 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 22% 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 22% 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. Presiding Officer,
   Employees Provident Funds Appellate Tribunal,
   7th Floor, 60, Skylark Buildings,
   Nehru Palace, New Delhi - 110 019.

+1cc to Mr.K.Ramu, Advocate, S.R.No.92705

WP No.21147 of 2011

LN(CO)
CS/05/12/2019