

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.2447 of 2019
WMP.No.2707 of 2019

Rohlig India Private Limited,
by its Authorised Signatory, Chennai-32 ..Petitioner

Vs

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Chennai-14
Respondent

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records of the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, Chennai, Tamil Nadu in EPFA.No.59 of 2017 and quash its order dated, 20.12.2018.

For Petitioner : Mr.Anand Gopalan
for T.S.Gopalan and Co.

For Respondent : Mr.V.Sundareswaran,
Standing Counsel

ORDER

The prayer in this Writ Petition is to quash the order dated, 20.12.2018, of the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, Chennai, Tamil Nadu, made in EPFA.No.59 of 2017, in and by which, the Tribunal had directed the Petitioner to pre-deposit 40% of the claim amount.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. The Petitioner Company is a Multi-National Corporation, engaged in the business international logistics. The Respondent has initiated proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after referred to as the Act), for determination of dues and by order dated, 12.01.2017, a sum of Rs.55,52,881/- was determined as dues and the Petitioner was directed to remit the

aforesaid amount to the respective EPF Account Numbers. As against the same, the Petitioner has filed an appeal in EPFA.No.59 of 2017, wherein, by the impugned order, the appeal was admitted and stay was granted, subject to pre-deposit of 40% of the amount determined in the order dated, 12.01.2017, on or before 31.01.2019. It is this order, which is under challenge in this Writ Petition.

4. The learned counsel for the Petitioner would strongly rely upon Section 7(O) of the said Act, which provides for entertaining an appeal on deposit of 75% of the amount due as determined by the authority concerned and there is also a proviso, provided for waiving or reducing the amount to be deposited, on recording valid reasons. He would further submit that as per the said proviso of Section 7(O) of the said Act, the Tribunal has power to waive or reduce the amount to be deposited. Along with the appeal, the Petitioner has also filed an affidavit to waive the pre-deposit amount, but contrary to the said proviso, without recording any reason, the Tribunal has passed the impugned order, admitting the appeal subject to pre-deposit of 40% of the claim amount. The petitioner seeks to reduce the pre-deposit of 40% for the reasons stated on the affidavit before the Tribunal. Hence, the impugned order is liable to be set aside.

5. The learned standing counsel for the Respondent would object for further reduction of the pre-deposit amount. He would submit that the Tribunal has directed the Petitioner to pre-deposit 40% of the amount determined and admitted that no reasons states for reducing the pre-deposit amount.

6. As per the proviso to Section 7(O) of the Act, the Tribunal has to record reasons in writing to waive or reduce the amount to be deposited. In the case on hand, on perusal of the impugned order, this Court finds that there is no reason assigned by the Tribunal in the impugned order for directing pre-deposit of 40% of the claim, which is also not disputed by the learned counsel on either side. Contrary to the said proviso to Section 7(O), the Tribunal, without recording any reason, has reduced the pre-deposit amount from 75% to 40%. Consequently, the impugned order is liable to be set aside and the matter ought to be remitted back to the Respondent to pass appropriate orders, afresh, in accordance with law.

7. Accordingly, the impugned order is set aside and the matter is remitted back to the Respondent to consider afresh and pass appropriate orders, on merits and in accordance with law, without being influenced by any of the observations made in this order, within a period of two weeks from the date of receipt of a copy of this order. Till such time, the Respondent shall not take any coercive steps.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Srcm

To

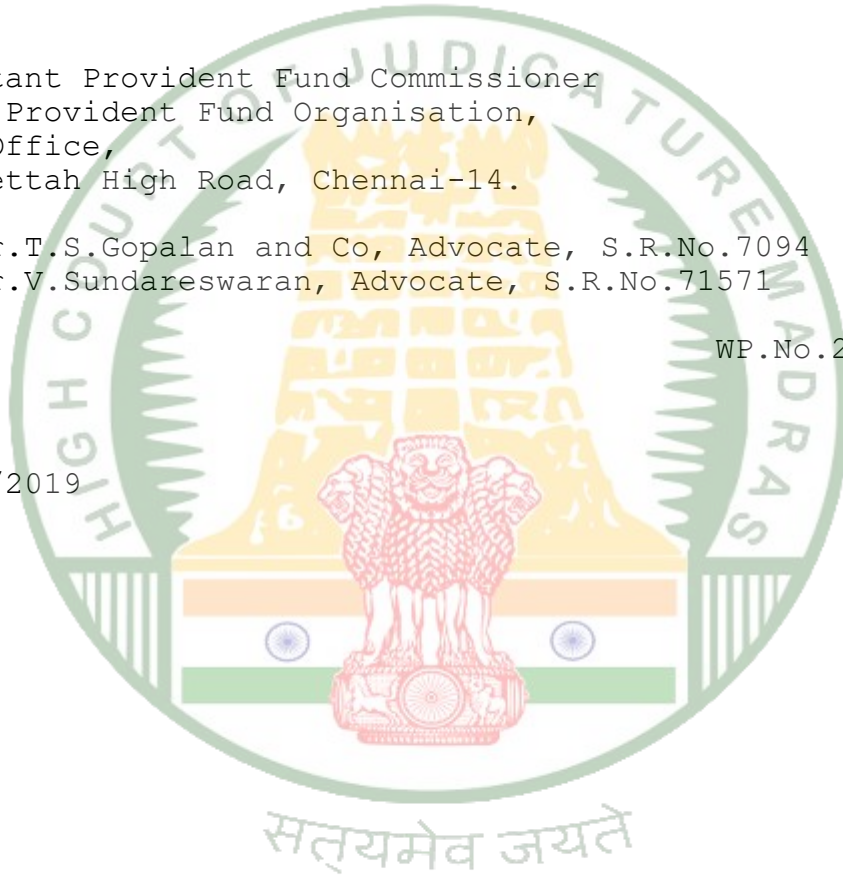
The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation,
Regional Office,
37, Royapettah High Road, Chennai-14.

+1cc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.7094
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.71571

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CP(CO)

rrs 31/01/2019



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