IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.09.2019

CORAM

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

W.P.No.20856 of 2005

M/s.SLK Contract Services,
Represented by its Managing Partner,
S.Levakumar
C/o C.Shyamsundar,
Indra Gandhi Ist Street,
Avvai Nagar, Choolaimedu,
Chennai - 600094. ..Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Tambaram, 3, Rajaji Salai,
Chennai - 600 045.

2.The Air Port Director,
Air Port Authority of India (IAD)
Meenambakkam,
Chennai - 27. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for record on the files of the first respondent pertaining to his order bearing No.TN/ SAO/ TBM/ Gr.58/ 31716/ ENF/ 2005 dated 18/19.04.2005 and confirmed by the order No.TN/ SAO/ TBM/ 31716/ ENF/ 2005 dated 13.06.2005 and quash the same and for a consequential direction to the first respondent to consider the case denovo after taking into consideration the materials placed by the petitioner regarding payment of Provident Fund contributions.

For Petitioner : Mr.A.V.Bharathi

For R1 : Mr.R.Vishnu
for Mr.K.Ramu

For R2 : Ms.J.Anitha
for Mr. Father A.Xavier Arulraj

ORDER

The order dated 19.04.2005, passed by the Assistant Provident Fund Commissioner, which was conformed by Review Authority in proceedings dated 13.06.2005 are under challenge in the present writ petition.

2. The writ petitioner is a partnership firm duly registered as per the provisions of Indian Partnership Act, 1932. The petitioner states that he was a job contractor under Airport Authority of India, Chennai for loading, unloading, packing and other allied operations at the Air Cargo Complex, at the Chennai Airport for the period from January 1995 to 21.05.2004. The contract amount for the job work was Rs.1,35,640/- per month. The amount is inclusive of wages to the workers their ESI & EPF contributions, cost of uniform, cost of packing materials etc. As per the contract, the ESI & EPF dues paid by the petitioner will be reimbursed by the Airport Authority of India. As such the ultimate financial burden with regard to ESI & EPF contributions was that of the principal employer who is the Airport Authority of India. At the outset, the writ petitioner claims that they are not responsible to pay contributions in respect of ESI & EPF contributions. Contrarily, they say, as per the contract, the second respondent - Airport Authority of India has to pay the contributions of ESI & EPF.

3. The learned counsel appearing for the respondents stated that it is an internal agreement/arrangement between the writ petitioner as well as the Airport Authority of India, which will not have any binding effect, as far as the Competent Authorities of ESI & EPF are concerned. The ESI & EPF authorities conducted an enquiry and the writ petitioner as well as the second respondent had failed to produce any records to the Assistant Provident Fund Commissioner enabling him to conduct the adjudication effectively. The order impugned dated 19.04.2005 reveals that for the purpose of determining the amount due, the employer was summoned to appear before the Assistant Provident Fund Commissioner on 06.04.2005. Shri S.Levakumar-contractor appeared for the enquiry. There was a difference in the wages provided in the form 6A and verified with the wage register (as given by the Enforcement Officer in his report) for the period from 1999 - 2003. For the period from 1995-1999, no records were produced, either by the employer or by the Airport Authority of India.

4. Under those circumstances, the authorities in exercise of the powers conferred under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act 1952, determined the amount due from the employer. Accordingly, Rs.4,63,935/- was determined. Challenging the said original order, the writ petitioner filed a review petition before the very same authority under Section 7B of Employees Provident Fund and Miscellaneous Provisions Act, 1952. The authority namely the Assistant Provident Fund Commissioner examined the review application carefully and found that no valid reason is provided to review the orders passed under Section A. Challenging these orders, the present writ petition is filed.

5. This Court, is of the considered opinion that the writ petitioner has not co-operated for an effective adjudication of the amount to be determined towards EPF and ESI contributions. They have failed to produce the relevant documents enabling the competent authority to assess the contribution to be paid by the employers. Under those circumstances, the Authorities competent, passed an order.

6. It is pertinent to note that the writ petitioner has not preferred any appeal contemplated under the Act, challenging the order of the original authority passed under Section 7A of the Act. The writ petition is filed without exhausting the appellate remedy provided under the Act. On that ground also, the writ petition is liable to be rejected. This apart, the writ petitioner mainly contended that they are not liable to pay the contributions and as per the agreement between the writ petitioner and the second respondent, the second respondent undertook to pay the contributions to the Provident Fund Authorities.

7. This Court is of the opinion that such a contract or agreement between the writ petitioner as well as the second respondent cannot have any binding effect, as far as the statutory authorities are concerned. If at all, any such arrangement is in existence, the writ petitioner at the first instance has to pay the competent authority, as the same is statutory liability and thereafter, recover the money from the second respondent as per their agreements/contract. Contrarily, the writ petitioner cannot shift responsibility depositing the contributions by stating that the second respondent alone is liable to pay the contributions to the Employees Provident Fund Authority. Such a stand can never be accepted by the Court and therefore, as per the determination made in the impugned order, the petitioner has to pay the EPF & ESI contributions and in the event of such agreements, the petitioner has to recover the same from the second respondent in the manner known to law.

8. In this view of the mater, the writ petitioner has not established any acceptable details of legal ground for the purpose of assailing the impugned order passed by the first respondent. Consequently, the Writ Petition is devoid of merits and stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

dua/sni

To

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Tambaram, 3, Rajaji Salai,
Chennai - 600 045.

2.The Air Port Director,
Air Port Authority of India (IAD)
Meenambakkam,
Chennai - 27.

+1cc to Mr.K.Ramu, Advocate SR.No.78291

+2cc to Mr.Father A.Xavier Arulraj , Advocate SR.No.78325

W.P.No.20856 of 2005

MG(CO)
GMY(04/11/2019)