IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.8352 of 2019
and
W.M.P.No.8895 of 2019

M/s.TVS Logistics Services Limited,
Karuna Kudil,
No.226, Cathedral Road,
Chennai - 600 086,
Rep.by its General Manager - HR. ... Petitioner

..Vs..

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014. ...Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent from initiating any recovery proceedings against the petitioner pursuant to the order dated 08.08.2014 in proceedings No. TN/CHN/CCI/17/TN-60639/Enf/2014 and further direct the respondent to consider the Review Petition filed by the petitioner dated 14.03.2019.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.T.R.Sundaram

O R D E R

The order dated 08.08.2014, passed under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that Section 7A order was passed by respondent on 08.08.2014. Challenging the said order, the petitioner filed W.P.No.6846 of 2014 and this Court passed an order dated 05.03.2014 and the relevant paragraphs are extracted hereunder:

> "7. As I have already pointed out, the only issue which needs to be resolved in this matter is as to whether the allowances enumerated herein above which are paid to the employees shall be concluded in the

basis wages for the purpose of payment of EPF Contribution. There are judgments taking conflicting views. So far as this Court is concerned, in a batch of writ petitions in E.P.No.15823 of 2010, etc., by order dated 07.06.2011, the Hon'ble Mr.Justice K.Chandru has held that these allowances should be included into basis wages. As against the same, an appeal has been filed in W.A.No.1087 of 2011 wherein, a Division Bench of this Court has granted an interim order of stay of the said order [vide Court dated 11.07.2011]. Subsequently, a number of interim orders have been passed by the learned Single Judges in a similar fashion.

8. In my considered opinion, the above issue now needs to be resolved by the Hon'ble Supreme Court. While granting interim order of stay, the Hon'ble Supreme Court has, however, permitted the Provident Fund Organisation to proceed with the assessment and to pass a final order. However, the Hon'ble Supreme Court has directed that there shall be no demand raised based on such assessment. In the case on hand also, in my considered opinion, the respondents may be permitted to go ahead with the assessment, but, as directed by the Hon'ble Supreme Court in SLP © No.8781-8782/12. However, it is made clear that this order will not in any manner preclude the respondents from making demand based on the basic wages not including the above allowances".

3. During the relevant point of time, when the final order was passed in the writ petition, the SLP was pending before the Hon'ble Supreme Court of India. Thus, this Court also passed final order stating that the order passed need not be implemented till the final disposal of the case pending before the Hon'ble Supreme Court of India. It is brought to the notice of this Court, that the Hon'ble Supreme Court of India passed final orders in the matter on 28.02.2019. Pursuant to the orders passed by the Hon'ble Supreme Court of India, the writ petitioner has filed the Review Petition under Section 7B of the Act. The said Review Petition has not been taken up for hearing on the ground that the Section 7A order was passed in the year 2014 and the necessary grounds in this regard were not raised during the appropriate time.

4. This Court is of the considered opinion that based on the fact that the issues were pending before the Hon'ble Supreme Court of India and this Court also had not adjudicated the matter on merits. Contrarily, the writ petition was disposed of on the ground that the writ petitioner is at liberty to approach the competent authority after the disposal of the SLP by the Hon'ble Apex Court of India. Thus, the issues were not

adjudicated on merits, during the relevant point of time. Undoubtedly, the scope of Review Petition is limited. However, considering the facts and circumstances and further issues were not adjudicated on merits and the Competent Authority shall consider all these aspects by entertaining the Review Application filed by the writ petitioner, adjudicate the same and pass orders in the light of the legal principles settled by the Hon'ble Supreme Court of India, in order dated 28.02.2019.

5. The learned counsel for the respondent is right in saying that such ground ought to have been raised during the appropriate time by the writ petitioner. The writ petitioner is entitled to adjudicate the matter, in view of the fact that the issues were subjudiced during the relevant point of time before the Hon'ble Supreme Court of India. This Court also passed an order granting liberty to approach the Competent Authority after the disposal of the case by the Hon'ble Supreme Court of India. This being the circumstances aroused in this case, this Court is inclined to pass following orders:

a) The impugned order dated 08.08.2014, passed in proceedings TN/CHN/CCI/17/TN-60639/Enf/2014, by the respondent, is quashed

b) The respondent is directed to entertain the Review Application filed by the writ petitioner and adjudicate the matter on merits and in accordance with law by affording the opportunity to all the parties concerned. The said exercise of concluding the proceedings shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

6. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Pns

To

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.

W.P.No.8352 of 2019
and
W.M.P.No.8895 of 2019

(CO)
CB(31/10/2019)