

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.30434 of 2019
W.M.P.No.30443 of 2019

Sree Saraswathi Mills Limited
rep.by its Director
Post Bag No.1, Saraswathi Nagar,
Tirrutani Taluk,
Thiruvalluvar District-631 211.

...Petitioner

vs.

1. The Central Provident Fund Commissioner & Secretary,
Central Board of Trustees, EPF,
14M Bhikaiji Cama Place,
New Delhi-110066.
2. Central Board of Trustees, EPF,
14, Bhikaiji Cama Place,
New Delhi-110066.
3. Regional PF Commissioner I,
Employees Provident Fund Office,
Regional Office, Vellore.
4. The Assistant Provident Fund Commissioner,
Recovery Officer,
S-1, TNHB, Phase III, Sathuvachari,
Vellore-632 009.
5. The Recovery Officer,
Employees Provident Fund Office,
Regional Office, Vellore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent in Proc.No.TB/VL/4981/(Recovery 2019)/6728 dated 30.09.2019 and quash the same as illegal, arbitrary, erroneous and consequently, direct the 1st and 2nd respondents to jointly consider and waive the penal damages levied on the petitioner under Section 14B of the EPF Act by the 4th respondent,

vide:Sanctioned Scheme dated 06.02.2015 by the Hon'ble B.I.F.R.

For Petitioner : Mr.T.Vasu
for AR.M.Arunachalam

For Respondents : M/s.V.J.Latha
for RR3 to 5.

O R D E R

The notice dated 30.09.2019 issued by the Assistant Provident Fund Commissioner for settling a sale proclamation is under challenge in the present writ petition.

2. The learned counsel appearing for the writ petitioner states that the petitioner company is engaged in manufacturing of Yarn, having been incorporated during the year 1961. The petitioner company has two units at Tiruttani and Nindra (Andhra Pradesh) and is covered under the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952.

3. The grievance of the writ petitioner is that the writ petitioner/Company has already been declared as a sick unit on account of financial constraints and therefore, they are not in a position to pay contributions within the time prescribed. However, the contributions were already cleared and also the interest had been paid to the organization. However, the respondents have initiated action for imposing the damages under Section 14B of the Act.

4. The learned counsel for the writ petitioner states that in respect of imposition of the damages, the parties are to be heard under the provisions of Section 14B of the EPF&MP Act, and it is categorically enumerated that if the company is already declared as a sick unit, then the authorities competent are empowered to waive the damages, which is to be imposed under Section 14B of the Act. In this regard, the petitioner has submitted a detailed representation on 27.02.2015. Without considering the representation, the respondents have initiated action and issued notice for settling a sale proclamation in proceedings dated 30.09.2019.

5. The learned counsel for the petitioner in this regard contended that the authorities competent shall adjudicate the issues, with reference to the explanation/objection submitted by the writ petitioner and take decision in respect of invoking the proviso of clause (ii) of Section 14B of the EPF Act. In other words, they have to consider for waiving of damages, which is

contemplated under the Act itself. Without conducting any adjudication, the respondents are estopped from initiating any further action for sale proclamation.

6. This being the factum, this Court is of the opinion that the authorities competent shall adjudicate the issues on merits for grant of waiver under the proviso to clause (ii) of Section 14B of the EPF Act. The second respondent, who is the competent authority is directed to adjudicate the issues, with reference to the representation submitted by the writ petitioner on 27.02.2015, in the light of proviso to clause (ii) of Section 14B of the EPF Act and pass final orders within a period of six months from the date of receipt of a copy of this Order. The writ petitioner is directed to enclose a copy of the representation and other relevant documents along with the order passed in this writ petition.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssb
To

1. The Central Provident Fund Commissioner & Secretary,
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Vellore-632 009.

5. The Recovery Officer,
Employees Provident Fund Office,
Regional Office, Vellore.

+1 cc to M/s.V.J.Latha Advocate sr90098

+1 cc to M/s.AR.M.Arunachalam Advocate sr90528

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