IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.NO.34361 OF 2019
AND
W.M.P.NO.35030 OF 2019

M/s.JBM Auto System Private Limited
#1, Ford Supplier's Park, S.P.Koil
Chengalpet Taluk
Kancheepuram District-603 204. ...Petitioner

vs.

The Regional Provident Fund Commissioner - II (C & R)
EPFO, Regional Office
3, Rajaji Salai,
Tambaram - 600 045. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Central Government Industrial Tribunal cum Labour Court, Chennai, in EPFA No.108 of 2019 and quash its order dated 30.10.2019.

For Petitioner : Mr.S.Ravindran
Senior counsel
for Mr.S.Bazeer Ahamed

For Respondent : Mr.K.Ramu
standing counsel

O R D E R

Mr.K.Ramu, learned standing counsel takes notice for the respondent. By consent of both the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of the Central Government Industrial Tribunal cum Labour Court, Chennai, dated 30.10.2019, directing the petitioner to deposit 60% of the dues determined in the order dated 19.05.2014 passed by the respondent under Section 7-A of the Employees' Provident

Funds and Miscellaneous Provisions Act, 1952 (for brevity "the EPF & MP Act"). The Tribunal passed such conditional order, while admitting the appeal filed against the order dated 19.05.2014 passed by the respondent.

3. Since the issue involved in this writ petition lies in a narrow compass, the facts and circumstances as well as the merits of the claim made by both parties in respect of the liability of the petitioner are not discussed hereunder in detail, except to refer certain facts and circumstances alone, which are necessary for disposal of this writ petition.

4. The petitioner is a private limited company. Proceedings were initiated by the respondent under Section 7-A of the EPF & MP Act, 1952, claiming contribution on various allowances for the period from March 2011 to August 2013. It culminated into an order dated 19.05.2014 passed by the respondent determining the contribution payable by the petitioner as Rs.2,33,88,768/- for the above said period. Challenging the said order, the petitioner preferred a statutory appeal before the Central Government Industrial Tribunal cum Labour Court, Chennai. Along with the said appeal, the petitioner filed an interim application seeking for waiver of pre-deposit of 75% of the contribution determined by the respondent. The Tribunal, by its order dated 14.08.2019, while admitting the appeal, directed the petitioner to deposit 40% of the dues determined in the order passed by the respondent herein, on or before 14.10.2019. By contending that the said order of the Tribunal was not a speaking order, the petitioner preferred a writ petition before this Court in W.P.No.25400 of 2019 and challenged the said order. This Court disposed of the said writ petition on 09.09.2019 by setting aside the said order and remitted the matter back to the Tribunal with a specific direction to rehear the waiver application filed by the petitioner and consider the same by affording an opportunity to all the parties and pass orders on merits and in accordance with law, keeping in mind the spirit of Section 7-O of the EPF Act. The writ Court, while remitting the matter back, has taken note of the fact that the said order dated 14.08.2019 was a non-speaking order. Pursuant to the remand, the Tribunal passed the present impugned order directing the petitioner to deposit 60% of the dues.

5. The learned Senior Counsel appearing for the petitioner submitted that when the matter is remitted back to the Tribunal, the petitioner cannot be put into a worser position than that of the previous one based on the order passed by the Tribunal, where even without assigning any reason, the Tribunal directed the petitioner to deposit only 40% of the dues. Therefore, he contended that after remand, when the Tribunal finds that the petitioner is having a prima facie case, it is not justified to

enhance the quantum of deposit from 40% to 60%.

6. On the other hand, the learned standing counsel appearing for the respondent submitted that the Tribunal though found that the petitioner is having a prima facie case, however, directed the petitioner to deposit 60% of the dues in compliance of the statutory requirement contemplated under Section 7-O of the EPF & MP Act. Thus, he submitted that when a statutory requirement contemplates pre-deposit of 75% and that the Tribunal granted the relief to the petitioner to deposit only 60%, they should be satisfied with the present order passed by the Tribunal instead of challenging the same.

7. Heard both sides and perused the materials placed before this Court.

8. The petitioner is aggrieved against the order of the Tribunal directing them to deposit 60% of the dues determined in the order passed by the respondent, the subject matter of appeal. There is no dispute to the fact that the very same Tribunal, while admitting the appeal, earlier directed the petitioner to deposit only 40% of the dues, by its earlier order dated 14.08.2019. The grievance of the petitioner against the said order was that the same was passed without assigning any reason, while considering the waiver application. Therefore, the petitioner approached this Court and filed the earlier writ petition in W.P.No.25400 of 2019. This Court found the said order as a non-speaking one and thus, set aside the same and remitted the matter back to the Tribunal to pass fresh orders on merits and in accordance with law, after hearing all the parties, also by keeping in mind the spirit of Section 7-O of the EPF & MP Act.

9. It is true that Section 7-O of the EPF & MP Act, contemplates that no appeal by the employer shall be entertained by the Tribunal unless he has deposited seventy five percent of the amount due as determined by an Officer referred to in Section 7-A of the EPF & MP Act. However, Proviso to Section 7-O of the EPF & MP Act, also empowers the Tribunal to waive or reduce the amount to be deposited for reasons to be recorded in writing. Therefore, it is evident that if the Tribunal is satisfied, it is empowered to waive or reduce the amount of pre-deposit. In this case, the Tribunal had already chosen to direct the petitioner to deposit 40% of the dues alone, however, by not assigning any reason. After the matter is remitted back, the Tribunal, now, has passed a speaking order, wherein, it has specifically found that the petitioner, being the appellant, has a prima facie arguable case and that the issues involved in the appeal can only be adjudicated by hearing both the parties of the appeal. After recording so, the Tribunal directed pre-

deposit of 60% of dues.

10. In my considered view, as rightly pointed out by the learned Senior Counsel, the petitioner cannot be placed in a worser position than that of the previous one, by enhancing the quantum of pre-deposit. If the Tribunal has chosen to direct the petitioner to deposit 40% of the dues without assigning any reason, after remand enhancing the pre-deposit from 40% to 60%, that too, after finding that the petitioner is having a prima facie case, appears to be not just and reasonable. Therefore, this Court is of the view that to protect the interest of both the parties, the petitioner can be directed to deposit 40% of the dues determined in the order challenged in the said appeal also by directing the Tribunal to dispose the appeal within a time frame.

11. Accordingly, this Writ Petition is allowed and the impugned order is modified as indicated below:

(a) The petitioner shall deposit 40% of the dues determined in the order passed by the respondent herein (subject matter of appeal before the Tribunal) before the respondent on or before 17.01.2020.

(b) The respondent shall not take any coercive steps against the writ petitioner till 17.01.2020 to recover the dues in pursuant to his order dated 19.05.2014.

(c) On making such deposit within the time stipulated supra, the Tribunal shall take up the appeal and dispose the same on merits and in accordance with law, after hearing both the parties on or before 31.05.2020.

(d) If the petitioner fails to comply with the above directions, automatic statutory implications will follow.

It is made clear that this Court is not expressing any view on the merits of the contentions raised by both the parties in the above appeal, as it is for the Appellate Authority to consider and decide the same on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk

To

The Regional Provident Fund Commissioner - II (C & R)
EPFO, Regional Office
3, Rajaji Salai,
Tambaram - 600 045.

+1cc to Mr.K.Ramu, Advocate, S.R.No.102755
+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.103075

W.P.No.34361 of 2019

RSV(CO)
CS/10/01/2020