

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1403 of 2020
and
W.M.P.No.1651 of 2020

1. The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation,
Regional Office,
Chennai-I,
No.37, Royapettah High Road,
Chennai - 600 014.
 2. The Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, Chennai-1
No.37, Royapettah High Road,
Chennai - 600 014.
- ... Petitioner

Vs.

M/s. AMRL Hightech City Ltd.
represented by its Vice-President,
Sh.R.Lakshmi Narayanan,
Anjalaya, II Floor,
Door No.7A (New) 2 to 4 (old)
Halls Road, Egmore,
Chennai- 600 008.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the Central Government Industrial Tribunal cum Labour Court, Chennai in EPFA.145 of 2019 and quash the order dated 09.01.2020 passed in EPFA No.145 of 2019 insofar as directing the petitioners to refund 25% of the amount deposited by the respondent.

For Petitioner : Mr.R.Vishnu

For Respondents : Mr.Patric Ryan

ORDER

This writ petition is filed challenging the order of the Central Government Industrial Tribunal cum Labour Court, Chennai, dated 09.01.2020 in EPFA.No.145/2019. EPF Organisation represented by its officials are the petitioners.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.

3. The respondent herein suffered an order dated 13.05.2019 under Section 7A of the said Act, wherein and whereby, the competent authority determined a sum of Rs.53,10,399/- as dues of Provident Fund, Pension Fund and Insurance Fund Contributions and Administration Charges for the period 04/2014 to 07/2015. After giving remittance of Rs.8,448/- made subsequently, a sum of Rs.53,01,951/- was arrived at as due. The respondent effected the payment of the said sum by way of demand draft dated 05.07.2019 along with their letter dated 11.07.2019 addressed to the Regional PF Commissioner, RO, Chennai-1, specifically by indicating that such payment is made under protest and to refrain the organisation from taking any coercive action against the respondent. In the said letter, the respondent has also reserved their rights to challenge the order made under Section 7A. Thereafter, they preferred an appeal against the said order before the Central Industrial Tribunal cum Labour Court, Chennai. The Tribunal, by order dated 09.01.2020 admitted the appeal. It also directed the petitioner organisation to refund excess remitted/ recovered amount beyond 75% of the dues to the appellant therein (respondent herein). The said order is put to challenge in this writ petition mainly by contending that the respondent on their own, voluntarily paid the entire dues and therefore, the Tribunal is not justified in directing refund of 25% of the dues determined and paid by the respondent herein. On the other hand, the learned counsel for the respondent contended that when the statutory liability fastened on the appellant/respondent herein is to make a pre-deposit of only 75% of the amount so determined, the petitioner organisation is not entitled to retain the balance 25%. Therefore, he contended that the Tribunal was right in ordering refund of the excess amount beyond 75%.

4. The respondent, as already stated supra, suffered an order under Section 7A. It is not in dispute that in pursuant to the said order, the respondent has effected payment on 05.07.2019, however, without prejudice to their right to challenge the order in determining such amount. No doubt, now they have filed an appeal and challenged the said order. It is also true that if an appeal is filed as per the statutory

requirement, pre-deposit of 75% of the amount dues, determined in the impugned proceedings, is to be made. Here in this case, no such requirement arises in view of the fact that the respondent themselves have made the entire payment before the organisation, however, without prejudice to their rights in the appeal. Therefore, the only question to be seen in the appeal is as to whether the order passed under section 7A is sustainable or not. The respondent has to canvass all the points before the Appellate Tribunal against the order dated 13.05.2019, so as to enable the Appellate Tribunal to decide the matter on merits and in accordance with law. However, the Tribunal, in this case, has passed the impugned direction to refund the excess amount beyond 75% to the respondent herein, probably, by considering that the respondent is statutorily bound to deposit only 75% as pre-deposit for entertaining the appeal. In my considered view, the said approach of the Tribunal, that too, without an application from the respondent seeking relief to that effect, cannot be appreciated as just and proper. Admittedly, the respondent has discharged their liability under Section 7A. No doubt, such discharge was without prejudice to their right to challenge the order made under Section 7A. When such being the factual position, question of refunding 25% of the amount during the pendency of the appeal does not arise, as the said payment made by the respondent pursuant to the order made under Section 7A is not by way of pre-deposit pending disposal of the appeal but as a discharge of their liability, however without prejudice to their right to challenge the order under Section 7A. Therefore, this Court is of the view that the Tribunal is not justified in ordering refund of excess amount beyond 75%.

5. Accordingly, this Writ Petition is allowed and the order of the Tribunal insofar as directing the refund of excess remitted/ recovered amount beyond 75% is set aside. Consequently, the Tribunal is directed to take up the main appeal and decide the same on merits and in accordance with law, after giving due opportunity of hearing to both sides. Such exercise shall be done by the Tribunal within a period of three months from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the matter as it is for the Tribunal to consider and decide. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S.IV)

/True Copy/

Sub Assistant Registrar

To

The Central Government Industrial Tribunal
cum Labour Court, Chennai

+1 cc to M/s.K.Ramu, Advocate Sr.No. 10615

AKM/03.03.2020/4P-3C /

W.P.No.1403 of 2020



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