IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9768 of 2020

Slam Clothing Private Limited,
Represented by: Authorised Signatory Mr. S. Ramesh Babu,
AB-2, Central Avenue,
Mahindra World City - SEZ,
Chengalpet - 603 002. ...Petitioner

-vs-

The Regional Provident Fund Commissioner II,
Employees Provident Fund Organisation,
Ministry of Labour, Government of India,
Regional Office,
Tambaram,
3, Rajaji Salai,
Chennai - 600 045. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent relating to Proceeding No. TB/RO/TAM/62499/Div 525/PDC/Damages/2109 dated 09.09.2019 and quash the same.

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

For Respondent : Mr. K. Ramu, Standing Counsel

O R D E R
(through video conference)

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioner and Mr. K. Ramu, Learned Standing Counsel for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by order No. TB/RO/TAM/62499/Div 525/PDC/Damages/ 2019 dated 09.09.2019 had levied penal damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as

'the Act' for short) against the Petitioner, who accepts to have received the copy of that order in September 2019 itself. The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 17.03.2020 challenging the order passed by the Respondent beyond the maximum limitation period of 120 days from the date of receipt of copy of that order.

3. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. In view of that legal position, it is not possible to entertain this Writ Petition challenging the order of the First Respondent.

4. A differentiation is sought to be made by the Learned Counsel for the Petitioner that in the aforesaid ruling, the limitation for filing appeal before the Appellate Authority had been fixed in the enactment itself, whereas in the present case, it has been prescribed through delegated legislation. It is well recognized in law that delegated legislation has the same legal effect as that of the enactment from which it has been created as held by the Constitution Bench of the Hon'ble Supreme Court of India in D.S. Garewal -vs- State of Punjab (AIR 1959 SC 512). In this context, it must be pointed out that Section 7-I(2) read with Section 21(2)(b) of the Act has expressly conferred power on the Central Government to make the rule relating to the time within which the appeal shall be filed before the Appellate Authority and as such, Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, framed by the Central Government fixing the limitation period in the exercise of that power has the same force of law as if it had been provided in the Act itself. Nothing has been shown to invalidate the said rule as ultra vires in order to disregard its operation.

5. Yet another factual disctinction is canvassed by the Learned Counsel for the Petitioner for restricting the applicability of

that binding decision only to the cases where appeal had been preferred before the Appellate Authority but declined to be entertained as time-barred, unlike the present one in which the Petitioner has directly approached this Court to challenge the impugned order after the maximum period of limitation has lapsed. It is not possible to countenance the said submission inasmuch as a person, who has preferred appeal before the Statutory Authority, cannot be said to be in a more blameworthy position than one who has not at all preferred such appeal. The obvious rationale behind the governing dictum is that where the maximum period of limitation prescribed in the statute for preferring appeal against an order before the Appellate Authority has lapsed, it is not permissible to circumvent the legislative intent manifested in that bar created by resorting to thereafter invoke the discretionary powers of the High Court under Article 226 of the Constitution. It is immaterial whether or not such time-barred appeal had been preferred to the Appellate Authority before filing of the Writ Petition.

6. In the upshot, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vjt

To

The Regional Provident Fund Commissioner II,
Employees Provident Fund Organisation,
Ministry of Labour, Government of India,
Regional Office,
Tambaram,
3, Rajaji Salai,
Chennai - 600 045.

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EV(CO)
KKV/17/08/2020