

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM

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

W.P. No. 21352 of 2018
and
W.M.P. No. 25031 of 2018

M/s.Niyas Apparels

Represented by its Sole Proprietrix
Fathima Haris, Wife of A.P.M. Haris
No.30-31, Balaji Nagar
Padi, Chennai - 600 050.

... Petitioner

-vs-

1. The Assistant Provident Fund Commissioner
Employees Provident Fund Organization
Regional Office, Ambattur
Ministry of Labour
Government of India
No. R-40A, T.N.H.B. Office-cum-Shopping Complex
Mugappair Road
Mugappair, Chennai - 600 037.

2. The Recovery Officer
Office of the Recovery Officer
Employees Provident Fund Organization
Regional Office, Ambattur
No. R-40A, T.N.H.B. Office Complex
Mugappair Road
Mugappair (East)
Chennai - 600 037.

... Respondents

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 First Respondent pertaining to the proceedings dated 30.06.2017 in No. TN/RO/AMB / 26943/PDC/203/2017/LEVY ORDER /14B/1 and consequential demand notice dated 16.04.2018 in R.R.C. No. TN1MB6657/0026943/10/04/2018/203/35 issued by the Second Respondent and quash the same.

For Petitioner : Mr. C.K.M.Appaji

For Respondents: Mr. J.Sathyanarayana Prasad
Standing Counsel

O R D E R
(through video conference)

Heard Mr. C.K.M.Appaji, Learned Counsel for the Petitioner and Mr. J.Sathyanarayana Prasad, Learned Standing Counsel appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by order No. TN/RO/AMB/26943/PDC/203/2017/ LEVY ORDER/14B/1 dated 30.06.2017 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, which had been received. 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 03.08.2018 challenging the order passed by the First Respondent beyond the maximum limitation period of 120 days from the date of receipt of copy of that order, after receipt of the consequential demand notice RRC No.: TNAMB6657/0026943/10/04/2018/203/35 dated 16.04.2018 issued by the Second Respondent, which is also assailed in this Writ Petition.

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. It is equally recognized principle of law that a challenge to a consequential order of recovery cannot be maintained in respect of issues which have attained finality in the adjudication made in the parental order itself. When it is pointed out the Writ Petition cannot be entertained in view of the aforesaid legal position, Learned Counsel for the Petitioner makes a fervent plea that the Petitioner would be satisfied if the arrears of provident fund accumulated are permitted to be remitted in 10 equated monthly installments.

4. In response to the query made, Learned Standing Counsel appearing for the Respondents has produced the Circular No.

RRC/28(23)06/BIFR/23781 dated 11.02.2014 and the Circular No. RRC/28(23)06/BIFR/3345 dated 12.05.2014 issued by the Central Provident Fund Commissioner, containing the instructions approved by the Central Board of Trustees of the Employees Provident Fund Organisation in their earlier meetings to permit the arrears of provident fund dues accumulated to be remitted in monthly installments.

5. Learned Counsel for the Petitioner states that the Petitioner has submitted a representation dated 05.08.2020 for availing the said benefit of remitting the arrears of provident fund accumulated in 10 equated monthly installments. Learned Standing Counsel appearing for the Respondent has acknowledged receipt of its copy.

6. Having due regard to the aforesaid submissions made, this Court without expressing any view on the correctness or entitlement of the claim made by the Petitioner, requires the Competent Authority to duly consider the aforesaid representation dated 05.08.2020 made by the Petitioner with reference to the parameters stipulated in the aforesaid circulars, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Before carrying out that exercise, if the Competent Authority is of the view that the Petitioner has not satisfied the prescribed requirements or eligibility criteria for that benefit, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose. In the event of the Competent Authority being of the opinion that the Petitioner has not satisfied the requirements even thereafter, an enquiry shall be conducted affording an opportunity of personal hearing to the Petitioner to explain its position regarding such compliance. It is made clear that resort to coercive measures for recovery against the Petitioner shall be deferred till the representation is disposed in the aforesaid manner.

7. Accordingly, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

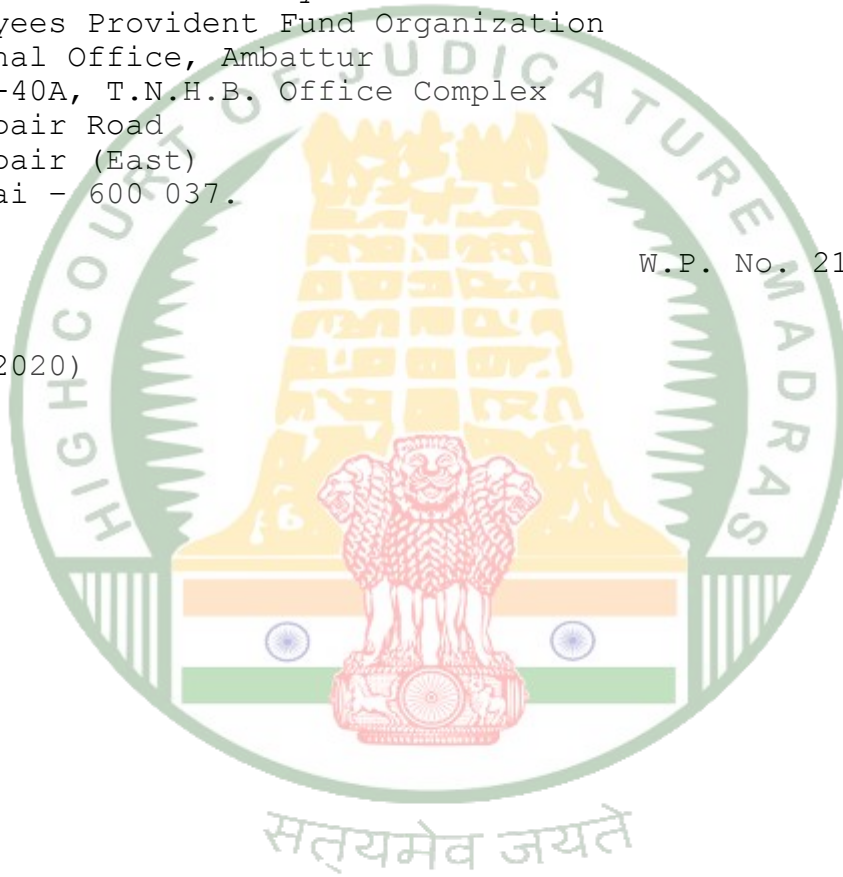
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To

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AK(CO)
CB(27/08/2020)



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