IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08-10-2020

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.14485 OF 2020
AND
W.M.P.NOS.17967 AND 17968 OF 2020

Sri Venkateswara Industries
Plot No.C/3, HN-11 (Ext.)
Maraimalai Nagar - 603 209
Rep. by its Proprietor Smonan Nair ... Petitioner

-vs-

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

2. M/s.Flowserve India Control Pvt Ltd.,
B-8, CMDA Industrial Area,
Maraimalai Nagar - 603 209,
Rep. by its Director. ... Respondents

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for records from the first respondent in Proceeding No. TB/TAM/RO/CC-II/T-6/8F Order-Pr Er/61243/2020, dated 13.03.2020 and quash the same.

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

For Respondents : Mr.Vishnu for R1

ORDER

This writ petition has been filed seeking for a writ of certiorari, calling for records from the first respondent in Proceeding No. TB/TAM/RO/CC-II/T-6/8F Order-Pr Er/61243/2020, dated 13.03.2020 and quash the same.

2. The petitioner company is a small scale industry employing six employees on its own and it is also subjected to

the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act (herein after referred to as "the Act").

3. In this context, the first respondent after having calculated the due payable by the petitioner towards the PF Account for the period from April 2016 to February 2017 and from March 2017 to December 2017, fixed the said amount to the extent of Rs.9,59,192/- and later on to the extent of Rs.14,66,802/- and passed orders to that effect on 18.11.2019 and 13.03.2020 respectively, directing the petitioner to remit the amount within a time frame.

4. According to the petitioner, the said order, dated 18.11.2019 has not been received by the petitioner and in this regard, it is the case of the petitioner that, only recently the petitioner approached the second respondent who is the customer of the petitioner company to clear the bills payable to the petitioner by the second respondent, only at that time, it was revealed by the second respondent that, the second respondent has received an order from the first respondent under Section 8F of the Act, dated 13.03.2020, whereby the second respondent was directed to remit the amount of Rs.14,66,802/- which is the PF due payable by the petitioner.

5. Only after coming to know the said development, it is claimed by the petitioner that, they approached the first respondent office to have access to the said order, dated 18.11.2019, however due to COVID-19 situation they could not get immediate access and only thereafter, very recently they had an access with the first respondent office from where they got an information that 18.11.2019 order had already been despatched in November 2019 itself and since the same has not been acted upon by the petitioner, Section 8F order was passed on 13.03.2020 addressed to the second respondent.

6. Therefore at this juncture challenging the order, dated 13.03.2020, the petitioner filed the present writ petition.

7. In this context, Mr.Anand Gopalan, learned counsel appearing for the petitioner would submit that, though it was claimed by the first respondent that, the order dated 18.11.2019 was despatched immediately in the last week of November 2019, no such order was received at the petitioner's side and now only a copy of the same has been sent, which was received on 23.09.2020 and if at all the petitioner is aggrieved over the said order and to prefer an appeal before the appellate authority against the same, that should have been done within 60 days time and 60+60 = 120 days is the maximum period under the statute available for the petitioner to prefer an appeal which is

already exhausted or is over. Therefore having no other option, this writ petition has been filed challenging the impugned orders as stated supra.

8. He would also submit that, though the petitioner is disputing the liability as well as the quantum of the said amount under the PF Account as claimed by the first respondent through the impugned order, without prejudice to the said contention on the part of the petitioner to have the dispute over the liability as well as the quantum of the amount specified in the impugned order, the petitioner in order to purchase peace wants to remit the said amount but not at one lumpsum but some easy instalments in view of the financial condition faced by the petitioner company due to COVID situation.

9. In this context, the learned counsel appearing for the petitioner would also request this Court to consider for grant of 18 months time to pay the said due by equal monthly instalments or otherwise but within the outer limit of 18 months.

10. However, Mr.Vishnu, the learned Standing counsel appearing for the first respondent, on instructions would submit that, the order dated 18.11.2019 was despatched immediately and the same was received by the petitioner on 22.11.2019 and in this regard, the acknowledgement received from the petitioner company with the rubber stamp / seal of the petitioner company also is available with the first respondent. Therefore the said contention raised by the petitioner that, the order impugned was not immediately despatched and it was served on the petitioner only on 23.09.2020 may not be correct.

11. The learned Standing counsel would also submit that, since the statutory dues have not been paid within the time frame contemplated therein in the Act, the first respondent authority having no other option sent the consequential notice, dated 13.03.2020 to the second respondent who is the customer (Garnishee) of the petitioner under Section 8F of the Act and therefore both the orders are fully justifiable and sustainable, hence those orders do not require any interference from this Court in the eye of law.

12. In respect of the plea raised by the petitioner's side to pay back the dues on instalment basis, the learned standing counsel appearing for the PF authorities would submit that, the due is already over due beyond the statutory period, therefore no consent can be given by the PF authorities for such a instalment payment and it is for the Court to decide.

13. I have considered the said submissions made by the learned counsels appearing for both sides and have perused the materials placed before this Court.

14. In view of the categorical submission made by the learned standing counsel for the PF authorities that, the impugned order dated 18.11.2019 has been served on 22.11.2019 itself on the petitioner, for which acknowledgement also is available with the PF authorities, the said plea raised by the learned counsel for the petitioner that, it was belatedly served only in September 2020 cannot be countenanced, therefore the said plea is rejected.

15. However, since the learned counsel appearing for the petitioner by citing the reason of COVID-19 situation and sluggishness in the market facing the financial crunch by the petitioner company seeks for indulgence of this Court to have the instalment basis to settle the entire dues which is payable in the PF Account, this Court feels that, in view of the COVID-19 situation since there has been a total recess in the business and industrial side, some solace can be given for the petitioner company since it has agreed to pay the dues, of course without prejudice to the contention about the liability and quantum of the demand.

16. However at the same time since it is the statutory due ought to have been paid otherwise in time, such a longer instalment period of 18 months as sought for by the learned counsel appearing for the petitioner, cannot be given.

17. Therefore considering all these aspects in order to meet the ends of justice, this Court feel that, some reasonable time can be given to the petitioner company to pay the entire PF due as demanded through the impugned order and accordingly this Court, while disposing of this writ petition is inclined to pass the following order :

(i) that the impugned order in view of the aforesaid submissions are not liable to be interfered with, therefore they can be effectively implemented in the following terms.

(ii) that the petitioner shall pay the due of Rs.14,66,802/- or any other due after deducting the amount in this regard if anything already paid either by equal instalments or otherwise within the outer limit of 9 months and the said period shall start from 1st of November 2020. There shall not be any deviation on this time schedule which shall be strictly adhered to.

(iii) In view of the aforesaid, the order dated 13.03.2020 passed against the second respondent shall be kept in abeyance till the dues is fully settled.

With these directions, this writ petition is disposed of. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

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

+1cc to M/s.T.S.Gopalan & Company, Advocate, S.R.No.33550

W.P.No.14485 of 2020

MG(CO)
CS/29/10/2020