

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6962 OF 2018

M/s.Santek Equipment Pvt.Ltd.

...Petitioner

vs.

Regional Provident Fund Commissioner.

...Respondent

Mr.Kedar J..Patil with Ms.Gargi Joshi, for the Petitioner.

Mr.Suresh Kumar with Ms.Mohinee Chougule, for the Respondent.

CORAM : G. S. KULKARNI, J.

DATE : SEPTEMBER 8, 2021

PC :

1. The challenge in this petition is to an order dated 5 April 2017 passed by the learned Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi. By the impugned order, the petitioner's appeal has been rejected on account of failure on the part of the petitioner to make a pre-deposit of the reduced 50% amount directed to be deposited. In dismissing the appeal, the Tribunal has passed the following order:

"As per order dated 17.02.2017 and subsequent order dated 23.03.2017, amount of pre-deposit not paid. At this stage application for modification of order dated 17.02.2017 filed on behalf of appellant.

Heard.

As order dated 17.02.2017 is self explanatory regarding pre deposit and as despite availing extensio period for payment of pre-deposit, pre-deposit amount not paid by appellant hence appeal filed by appellant is dismissed-in-default. Copy of the order be sent to the parties as per law. File be consigned to the record room after due compliance.”

2. In an earlier order dated 30 April, 2021 passed by this Court (M.S.Karnik, J.), a statement as made on behalf of the petitioner, that the petitioner is ready to deposit an amount of Rs.10,26,314/- and Rs.11,41,782/- in this Court, was accepted. The amounts were accordingly deposited. In view of such deposit the authorities have not taken any further action for recovery of amount as also the bank account of the petitioner was defreezed.

3. On the above backdrop, the proceedings are listed today. Learned Counsel for the petitioner has drawn my attention to the prayers as made in the petition which are composite prayers which assail the orders dated 6 December 2016 and 4 January 2017 passed by the Regional Provident Fund Commissioner under Section 7(A) and 7(B) of the Employees Provident Funds and Miscellaneous Provisions Act,1952 (for short '**the Act**'). An amount of Rs.11, 41,782/- was due from the petitioner establishment towards provident fund and allied dues for the period as specified in paragraph 1 of the order read with its annexure. The amounts pertain to one employee Mr.Vishal A.Mane. The petitioner was directed to deposit the said amount within 15 days of receipt of the

said order, failing which the same would be recovered in accordance with the provisions of the Act. The petitioner being aggrieved by such order passed by the Regional Provident Fund Commissioner, approached the tribunal (for short '**the tribunal**'). The learned Presiding officer, by his order dated 17 February 2017 as observed hereinabove, directed pre-deposit of 50% of the amount which was not honoured. Accordingly the case was dismissed for want of prosecution.

4. In the above circumstances, as the amount as directed by this Court are deposited in this Court, in my opinion, interest of justice would be served, if the appeal filed by the petitioner is restored to file of the tribunal and is heard on merits. As in the peculiar facts of the case, such amounts can be considered to be a deposit made for the purpose of said appeal. Ordered accordingly.

5. The Tribunal would consider whether the employee Mr. Vishal A.Mane. in whose benefit the order is passed would become a necessary party.

6. It is informed by Mr.Suresh Kumar, learned Counsel for the respondents that the Principal Seat of the Tribunal is at Delhi, however, the appeals would now be heard by the Central Industrial Tribunal at Sion, Mumbai. If that be so, the petitioner is at liberty to pursue such proceedings at the seat of the Tribunal. If such an application is made, the same be taken up for hearing and the same be considered by the

learned Presiding Officer of the Tribunal. The full amount of demand as directed by the impugned order passed by the Regional Provident Fund Commissioner, thereafter reduced to the 50% shall remain deposited in this Court, as fairly suggested by Mr.Suresh Kumar, which shall be subject to the final orders which may be passed by the Appellate Tribunal, on the petitioner's appeal.

7. The petition is accordingly disposed of in the above terms permitting the petitioner to prosecute the claim before the Appellate Tribunal. All contentions of the parties on merits are expressly kept open.

8. It will also be open to the parties depending upon the result of the adjudication of the appeal, to make an application for withdrawal of the amounts as deposited in this Court.

(G. S. KULKARNI, J.)