IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23147 of 2017

Cenza Technologies,
Old No.8, New No.4,
Perungudi Industrial Estate,
Perungudi, Chennai - 600 096.
represented by its General Manager (Finance),
Mr.Yegnasubramanian ...Petitioner

Vs

1.The Employees' Provident Fund Appellate Tribunal,
No.2, Maruthi Complex,
1st A Main (60 feet Road),
HIG A Sector, Near SBI,
Yelahanka New Town,
Bangalore - 560 064.

2.The Assistant Provident Fund Commissioner (C & R),
Employees' Provident Fund Organization,
Regional Office,
37, Royapettah High Road,
Chennai 600 014.

3.The Enforcement Officer,
Division 12 and 19, (Previous Division 20),
Employees' Provident Fund Organization,
Regional Office, 37, Royapettah High Road,
Chennai 600 014. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the first Respondent to condone the delay of 341 days in filing the Appeal.

For Petitioner : Mr.S.Menaka

For 1st Respondent : No appearance

For Respondents 2 & 3 : Mr.T.R.Sundaram

O R D E R

Petitioner/Management has come up with this Writ Petition seeking a direction to the 1st Respondent/EPF Appellate Tribunal to condone the delay of 341 days in filing the Appeal against the impugned order dated 18.04.2016 passed by the 2nd Respondent/EPF Appellate Tribunal in rejecting their plea on the ground that, beyond 120 days prescribed under the Employees' Provident Fund Act, 1952 (in short 'EPF Act') read with Rules made thereunder, no Appeal can be entertained.

2. Learned counsel for the Petitioner/Management contended that, when there is no bar under the Statute, the Petitioner/Management has no other option except to knock at the doors of this Court and convince about the genuine reasons to be taken note of, for the purpose of condonation of delay and to direct the EPF Appellate Tribunal to entertain the Appeal.

3. Learned counsel appearing for Respondents 2 and 3/EPF Organization submitted that, a sum of Rs.4,15,190/- has been determined as contribution payable by the Petitioner and that, the said amount has been recovered invoking Section 8F of the EPF Act, 1952. It is his contention that, the EPF Appellate Tribunal has no powers to entertain any matter beyond 120 days and hence, the Writ Court cannot extend time beyond what is prescribed under the Act.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is not in dispute that, the contribution payable by the Petitioner has been determined by the EPF Authorities and that, an Appeal has been preferred by the Petitioner beyond the statutory period of 120 days prescribed under Section 7F of the Rules made thereunder. When there is an outer time limit prescribed under the Act, the employer is entitled to file an Application within the time to waive the deposit for the purpose of obtaining stay. However, there are no statutory powers prescribed to enable the Tribunal to entertain the Appeal beyond 120 days. It is no doubt true that, it is a very harsh provision, but, this Court cannot extend time beyond what is prescribed under the Statute.

6. As regards the issue of limitation, this Court by a recent order dated 29.06.2021 in W.P.No.13290 of 2021, has held as under:

> "6. Even though the period of limitation prescribed is three years, it is to be noted that some of the employers may

take recourse to law with immediate effect or some of them may disappear from the scene and in that event, it is very difficult for the ESI Corporation to keep a watch over them and ascertain whether any appeal has been preferred within three years or not. The ESI Corporation is bound to take coercive action, which would make the employer to file an appeal under Section 75 of the ESI Act. This Court has already held that the Legislatures must think of reducing the period of time limit prescribed under the ESI Act to prefer an appeal and reduce the period from three years to one year, as the Court has no power either to legislate or to make any amendment to the Act. After one year and within three years, the ESI Court can entertain the dispute under Section 75 provided the entire amount is deposited and that beyond one year, the waiver application cannot be entertained. On one such occasion, the Hon'ble Apex Court in the case of Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99, had suggested for amendment of the provisions of the Industrial Disputes Act and the relevant paragraph is extracted hereunder:

> "11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for

settling disputes arising out of termination of service which can be resorted to by an individual work-man. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

7. In the present case on hand, the Legislature must think of amending the provisions of the Employees' Provident Fund Act, 1952, thereby permitting the Tribunal to entertain the Appeal beyond 120 days, if genuine cause is given. But, no waiver shall be permitted. A condition can be stipulated that, the entire amount together with interest and 25% of the damages are to be deposited to entertain the Appeal beyond 120 days, but, not later than one year. In case, the plea of mens rea is made out, the same can be adjudicated before the Tribunal. The above suggestion is made only for the Legislature to think about the amendment of the EPF Act, to enable the Tribunal to entertain the Appeal by the employer on deposit of entire amount together with interest and 25% of the damages, if not determined. This Court is of the view that, when there is a genuine case, it shall not be thrown out, as it amounts to deprivation of justice to the needy. In the case on hand, shutters for adjudication is already closed, and it cannot be opened by the Petitioner/Management.

8. Registry is directed to mark a copy of this order to the Secretary, Ministry of Law & Justice, Government of India, New Delhi, for necessary action, as regards paragraph 7 of this order.

The Writ Petition is dismissed with the above observation. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To

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Regional Office, 37, Royapettah High Road, Chennai 600 014.

4.The Secretary, Ministry of Law & Justice,
Government of India,
New Delhi.

+1 cc to M/s.S.Menaka, Advocate Sr.No.30982



KV(CO)
RVM(17/08/2021)