BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**
W.P.(MD)No.2296 of 2011

M/s.Sri Siddhivinayaga Tex India Pvt. Ltd.,
Senankottai - 624 710
Vedasandur,
Dindigul District,
Tamilnadu,
Rep. by its Chief General Manager ... Petitioner

versus

1. The Employees' Provident Fund
Appellate Tribunal,
Scope Minar, Core-II,
4th Floor, Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

2. Regional Provident Fund
Commissioner II (C&R),
Employees' Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam,
Madurai - 625 002. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the second respondent in his proceedings in TN/MDU/57987/ENF/Circle 13 / 31074/2009 dated 29.12.2009 as confirmed by the 1st respondent herein in its order dated 28.01.2011 made in A.T.A.No.28(13)/2010 and quash the same.

For Petitioner : Mr.K.Hema Karthikeyan
For Respondents : Mr.Muralisankar

ORDER

This Writ Petition has been filed challenging the order dated 28.01.2011 passed by the first respondent in A.T.A.No.28(13)/2010.

2.The case of the petitioner is that the petitioner started spinning mill and it went into commercial production from 06.06.2007 and from the very inception of the mill, the petitioner was prompt in remitting the Employees Provident Fund contributions for both the employees and employer to the second respondent in time without any delay or default till date. While so, a team of the second respondent Enforcement Officers inspected the petitioner mill and after the inspection, they have ordered the petitioner to remit contributions on stipend paid to the apprentices by their report dated 16.01.2009. However, the team omitted to consider the evidences placed before them and in the said report, the squad has not sent the full list received from the petitioner mill and they conveniently omitted to take the top portion which contained the vital particulars, viz., the name and address of the petitioner mill, details of apprentices and stipend paid to them. The act of the Provident Fund authorities clearly revealed their predetermined mind to claim contributions on stipend paid to apprentices and they have wantonly and willfully omitted to consider the relevant unimpeachable records relating to apprentices and arrived at a conclusion that all the apprentices are employees of the mill and the second respondent passed an order dated 29.12.2009 and claimed a sum of Rs.5,80,706/- being the contribution on stipend paid to apprentices for the period from 06/2007 to 09/2008. The said claim of contributions on stipend paid to apprentices is unsustainable in law.

3.The petitioner further averred that there are more than 100 mills in Dindigul region and therefore, there is an acute shortage of experienced labours in the area and hence, the petitioner has recruited apprentices from nearby villages and imparted them necessary training and they were paid stipend and other benefits. As per clause 4(e) of the Certified Standing Orders of the petitioner mill, the apprentice is defined as 'learner' who is given stipend during the period of his learning which shall be for three years and the said Standing Orders clearly indicate that the petitioner is having right to recruit apprentices as per the said Certified Standing Orders and scheme. Further, the apprentices are not eligible for Dearness Allowance, other allowances, Employees Provident Fund contributions and bonus and they have whole-heartedly accepted and signed the said scheme.

4.As against the order of the second respondent dated 29.12.2009, the petitioner filed an appeal in A.T.A.No.28(13) of 2010 before the Employees Provident Fund Appellate Tribunal, the first respondent herein. After hearing the petitioner and the second respondent, the Tribunal was pleased to grant stay on condition that the petitioner should deposit 30% of the disputed amount within a period of two months from 13.01.2020. In compliance of the said order, the petitioner mill deposited a sum of Rs.1,74,212/- with the second respon6dent on 08.03.2010. While the case in progress, the petitioner mill has filed an application in I.A.SR.No.4573 of 2010 dated 09.12.2010 seeking a direction to the second respondent to produce the documents, viz., File containing personal hearing conducted by the Assistant Provident Fund Commissioner, Madurai and File containing Personal Hearing conducted by the Regional Provident Fund Commissioner II (C&R), Madurai, for deciding the appeal in the interest of equity and justice. However, the Tribunal without considering the said interlocutory application, passed the impugned order against the petitioner which is unsustainable one as the said two files are very much relevant. Hence, the present Writ Petition is filed.

5.The learned Counsel appearing for the petitioner would submit that the facts in the present case is not disputed. The petitioner filed I.A.SR.No.4573 of 2010 dated 09.12.2010 for production of two documents, namely, the File containing personal hearing conducted by the Assistant Provident Fund Commissioner, Madurai and File containing Personal Hearing conducted by the Regional Provident Fund Commissioner II (C&R), Madurai, as both the files are very much essential to decide the issue before the Tribunal. However, without summoning those documents which are available on the file of the second respondent, the first respondent decided the matter against the petitioner mill is unsustainable one. Further, the learned Counsel appearing for the petitioner would submit that in the present case, for collection of the said amount already the Provident Fund Authorities have attached the bank account of the petitioner mill and collected the amount. Even after collecting the amount, the petitioner mill has to face the penal interest and damages. Hence, the petitioner prayed for setting aside the impugned order passed by the Tribunal and remitted back to the Tribunal which would not cause any prejudice to the second respondent since they have already collected the entire portion of the amount and they have to collect only damages and interest.

6.The learned Counsel appearing for the respondents is not disputed the facts submitted by the learned Counsel for the petitioner.

7.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

8.Considering the facts and circumstance of the case, this Court need not discuss the merits and demerits of the case. Undisputedly, the petitioner filed I.A.SR.No.4573 of 2010 dated 09.12.2010 for production of two documents, namely, the File containing personal hearing conducted by the Assistant Provident Fund Commissioner, Madurai and File containing Personal Hearing conducted by the Regional Provident Fund Commissioner II (C&R), Madurai, and both the files are very much essential to decide the issue before the Tribunal. However, without summoning those documents which are available on the file of the second respondent, the first respondent decided the matter against the petitioner mill is unsustainable one. Further, as contended by the petitioner, for collection of the said amount already the Provident Fund Authorities have attached the bank account of the petitioner mill and collected the amount and even thereafter, the petitioner mill has to face the penal interest and damages.

9.For the aforesaid reasons, the impugned order passed by the first respondent dated 28.01.2011 is hereby set aside and remitted the matter back to the Tribunal. However, this Court makes it clear that the amount recovered from the petitioner mill need not be returned and this Court is not inclined to interfere with the attachment. It is represented that the Employees' Provident Fund Appellate Tribunal is now reconstituted as Central Government Industrial Tribunal, Chennai. Therefore, the Central Government Industrial Tribunal, Chennai, shall decide the matter on merits and in accordance with law and pass orders after summoning the documents which were sought by the petitioner mill in I.A.SR.No.4573 of 2010, dated 09.12.2010.

10.With the above directions, the Writ Petition is disposed of. No costs. Consequently, M.P.(MD)No.1 of 2011 is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

To

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   Appellate Tribunal,
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