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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th August, 2021

\+ **W.P.(C) 7709/2021 & CM APPL. 24042/2021**

BT INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr. N.K.Kaul, Mr. Sanjoy Ghose, Sr. Advocates with Mr. Jeevan Ballav Panda, Ms. Shalini Sati Prasad, Mr. Satish Padhi, Ms. Meher Tandon, Mr. Gaurav Sharma and Ms. Aparna Sinha, AR, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Amrita Prakash, CGSC for Respondent No.1
Mr. Siddharth with Mr. Amit Kumar Agrawal, Advocates for Respondent Nos. 2 & 3/EPFO

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through video conferencing.

2. The present petition has been filed by the Petitioner- Company, which had established a Private Provident Fund Trust for its employees with the approval of the Commissioner of Income Tax, Delhi. The said Provident Fund Trust was named as BT (Worldwide) Employees Provident Fund, and was later renamed as BT India Private Limited Provident Fund. The Petitioner-Company had sought exemption under Section 17(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (*hereinafter, "EPF Act"*), read with paragraph 27A of the Employees'

Provident Fund Scheme 1952, on the basis of the fact that its employees were in receipt of benefits the nature of a Private Provident Fund, which were no less favourable than the benefits provided under the EPF Act 1952.

3. On the last date of hearing, ld. Senior Counsel for the Petitioner had submitted that the Additional Central Provident Fund Commissioner of Delhi has already recommended exemption for the Petitioner vide recommendation dated 13th July 2016 and the same was recommended with effect from 31st March 2008. However, only recently it was realised that the Petitioner was shown in the unexempted category on the portal of the Employee Provident Fund Office (*hereinafter, 'EPFO'*).

4. Vide the last order dated 4th August 2021, Mr. Siddharth, ld. Counsel for the EPFO was directed to seek instructions and ascertain as to whether exemption is to be granted to the Petitioner, and if so, from what date.

5. Further to the last order, Mr. Siddharth, ld. Counsel appearing for the EPFO, submits that he has received instructions that the EPFO has already recommended the Petitioner's case for grant of exemption, however the Central Government is to take a decision in this regard, and the same may take at least one month.

6. Ms. Amrita Prakash, ld. Counsel appearing for the Central Government submits that the said decision would take at least one to two months.

7. The present petition is one which involves Provident Fund benefits for all the Petitioner's employees, *qua* which, the Petitioner was already enjoying relaxation when it was located in Gurgaon, and after shifting to New Delhi on 24th January, 2013, it had made representations in respect of the same. On the said application made by the Petitioner, the EPFO had

recommended the exemption vide its recommendation dated 13th July, 2016 in the following terms:

> *"11. The System of Monitoring that exists is as under:-.*
>
> *a) The exempted establishments are required to file a monthly return and another return on a yearly basis in the format prescribed.*
>
> *b) There is a yearly inspection which also includes audit of the trust being maintained by such establishments which are relaxed under Para 79 of the Scheme or have been granted exemption by the Appropriate Government.*
>
> *c) The Provident Fund maintained by the Board of Trustees are subject to audit by a qualified independent Chartered Accountant annually. Wherever necessary the EPFO has a right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the Employer.*
>
> *d) A software for monitoring exempted establishments is in place which facilitates the employers of exempted establishment to feed-in details in respect of the establishments and the Trusts on a monthly basis. This would enable EPFO field offices and also the Head Office to monitor the exempted Establishment.*
>
> *e) Further, a proforma for third party audit of exempted establishment for effective auditin·g of such establishments by independent and qualified Chartered Accountants has been finalized by the Sub~Committee on exempted establishments in its meeting held on 28.03.2014.*
>
> *xxx*

> *<u>It is therefore requested that the proposal may please be considered and exemption to the establishment under Para 27A of EPF Scheme, 1952 may be granted w.e.f. 31.03.2008</u>.”*

8. The Petitioner was all along under the impression that it was enjoying the exemption, in view of the above extracted recommendation, it is only when the Petitioner recently logged into EPFO’s portal that it is stated to have realised that it is shown in the unexempted category. It was then learnt that a specific decision was yet to be taken by the Central Government. Accordingly, the present writ petition was filed.

9. The Fund has also been operated by the Petitioner since 1997 i.e., for more than 23 years. The grant of an exemption to such a trust would have major implications for the employees, inasmuch as there would be a continuous inflow and outflow of employees, transfer of funds between the Petitioner’s trust and other trusts or the EPFO, would be affected leading to employees being detrimentally affected. The Petitioner has all along enjoyed either relaxations or an exemption and there are no reasons being given as to why the exemption is not being granted, despite the recommendation of the authority concerned.

10. Further if the Petitioner is not granted an exemption or not considered as an exempted trust, there are possibilities that there would be penalties and coercive steps against the Petitioner.

11. Accordingly, since the recommendation for exemption of the Petitioner has already been made by the EPFO, as far back as in 2016, and the matter is now pending for almost five years with the authorities, it is

deemed appropriate to direct as under:

1. The Petitioner shall continue to function in the manner as it was functioning before, i.e., as being in the exempted category. The authorities shall ensure that the necessary access to the portal, as an exempted category trust, shall be granted to the Petitioner, within one week.
2. No coercive measures or penalties shall be taken against the Petitioner.
3. The decision on the Petitioner's application for exemption shall be taken on or before 30th September, 2021 and an affidavit in this regard shall be placed before this court.

12. Let counter affidavit be filed within six weeks and rejoinder thereto, if any, be filed within four weeks thereafter.

13. List on 1st December, 2021.

PRATHIBA M. SINGH
JUDGE

AUGUST 18, 2021
Aman/AK
(corrected & released on 21st August, 2021)