



W.P.No. 31900 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.11.2022

Coram

The HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.No.31900 of 2022
and W.M.P.No.31346 & 31347 of 2022

M/s Irbaz Shoe Company,
No.82, Gudiyattam Road,
Chinnavarigam Village,
Thuthipet Post,
Ambur – 635811
Rep by its Partner

.. Petitioner

Vs

The Assistant Provident Fund Commissioner,
Sub Regional Office,
S-1, TNHB Phase III,
Sathuvachari,
Vellore – 632 009.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records and quash the order dated 26.07.2022 passed in EPFA No.295 of 2019 by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court & Employees Provident fund Appellate Tribunal, Chennai.

For Petitioner : Mr.S.Ravi
for M/s.Gupta and Ravi

For Respondent : Mr.P.K.Panneer Selvan



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ORDER

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The petitioner has challenged the order dated 26.07.2022 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court and Employees Provident Fund Appellate Tribunal, Chennai in EPFA No.295 of 2019.

2. Under the aforesaid order, the petitioner's request for waiver of the pre-deposit amount for filing an appeal was considered and the petitioner was directed to pay 45% of the determined amount as per Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. As per the statute, in the ordinary circumstances, the petitioner will have to pay 75% of the determined amount for filing statutory appeal. But however there is a provision which enables the petitioner to seek for waiver of the pre-deposit amount. Exercising the said statutory provision, the petitioner had sought for waiver of the pre-deposit amount. The Tribunal reduced the same from 75% to 45%. The petitioner is agreeable to pay the said 45%. The petitioner has now paid Rs.10,96,112/- out of the said 45% and the balance works out to Rs.7,40,893/-, which the petitioner seeks for payment in instalments in this writ petition.



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3. The petitioner in the affidavit filed in support of this writ petition has stated the following reasons for their inability to pay the entire amount as mentioned in the impugned order:

(a) Due to covid-19 lockdown the petitioner's business came to a complete stand still.

(b) For the past two years, the factory was not generating income.

4. Due to the aforementioned circumstances, the petitioner seeks payment of the balance amount of Rs.7,40,893/- in two instalments. In normal circumstances, if the Tribunal has exercised its discretion by reducing the pre-deposit amount to 45% from the mandatory 75%, this Court will not entertain the writ petition under Article 226 of the Constitution of India. In the case on hand, the petitioner due to its financial condition, has expressed difficulty in paying the balance amount in one shot but has expressed its willingness to pay the balance amount in two instalments and only under those circumstances, this writ petition is being entertained by this Court.



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5. Learned standing counsel for the respondent has also left it to the discretion of the Court to grant time to the petitioner to pay the balance amount.

6. After giving due consideration to the aforementioned factors, this Court is of the considered view that no prejudice would be caused to any of the parties if the petitioner is allowed to deposit the balance sum of Rs.7,40,893/- to the credit of EPFA No.295 of 2019 before the Central Government Industrial Tribunal cum Labour Court and Employees Provident Fund Appellate Tribunal, Chennai within a period of eight weeks from the date of receipt of a copy of this order. On receipt of the said amount, the Tribunal shall entertain the said statutory appeal in EPFA No.295 of 2019 filed by the petitioner and pass final orders on merits and in accordance with law. No coercive steps shall be taken by the respondent against the petitioner for a period of eight weeks. However, it is made clear that in case the petitioner fails to pay the aforesaid amount within the stipulated period, the respondent is at liberty to enforce the order passed against the petitioner under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.



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7. With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
mmi

To

The Assistant Provident Fund Commissioner,
Sub Regional Office,
S-1, TNHB Phase III,
Sathuvachari,
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ABDUL QUDDHOSE,J.

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