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W.P.No.33490 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.33490 of 2022
and WMP No.32935 of 2022

M/s K.C.Dairy Products (P) Ltd.,
Oddanchatram Main Road,
Vedasandur Tk, Dindigul District-624710,
Rep by its Authorised Signatory

... Petitioner

versus

1.Regional Provident Fund Commissioner II,
Employees Provident Fund Organisation,
Ministry of Labour and Employment,
Govt. of India, Regional Office,
No.1, Lady Doak College Road,
Chokkikulam, Madurai-625 002.

2. The Recovery Officer,
Employees Provident Fund Organisation
District Office,
No.16, ARS Salai, Bhava Lodge Building,
Nagal Nagar, Dindigul-624 003.

... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari to call for the records of the Central Government Industrial Tribunal-cum-Labour Court, Chennai in EPFA No.83 of 2022 and quash its order dated 13.09.2022.

For Petitioner	: Mr.S.Haroon-Al-Rasheed for M/s T.S.Gopalan & Co
For Respondents	: Ms.R.Meenakshi Standing Counsel



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ORDER

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This writ petition has been filed challenging the order passed under Section 7-O of the Employees of Provident Fund and Miscellaneous Provisions Act, 1952, under which, the petitioner's request for waiver of pre-deposit was considered and the Central Government Industrial Tribunal-cum-Labour Court, Chennai has directed the petitioner to deposit 45% of the determined amount instead of 75% normally required as per the provisions of the EPF Act.

2. The petitioner categorically contends in this writ petition that they are not liable to pay the EPF contribution as the concerned employees are only apprentices, who are not covered under the provisions of EPF Act. The petitioner has expressed financial difficulty in paying the pre-deposit amount for filing an appeal. The petitioner claims that their factory has been transferred to a third party and therefore, they are not in a position to pay the pre-deposit amount.

3. The Tribunal has passed the impugned order on 13.09.2022 exercising its discretion and has reduced the pre-deposit amount payable by the petitioner from 75% to 45%. The petitioner contends that by total non-application of mind to the contentions of the petitioner in the waiver application,



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the Tribunal has passed the impugned order.

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4. Heard Mr.S.Haroon-Al-Rasheed, learned counsel for the petitioner and Ms.R.Meenakashi, learned Standing Counsel accepts notice on behalf of the respondents. By consent of both the parties, the main writ petition has been taken up for final disposal.

5. As seen from the impugned order, the major portion of the reasons given by the Tribunal pertains to the merits of the case and does not deal with the difficulties expressed by the petitioner for seeking waiver/reduction of the pre-deposit amount for the purpose of entertaining an appeal. Even though the Tribunal has reduced the pre-deposit amount to 45% from the statutory requirement of 75% and has granted partial waiver, this Court is of the considered view that in view of the fact that the petitioner has already sold its business and is not in a position to pay the entire pre-deposit amount and that too when the petitioner categorically contends that they are not liable to pay ESI contribution on the ground that the concerned employees are only apprentices, this Court will have to further reduce the pre-deposit amount from 45% to 40%.



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6. Normally, this Court would not entertain this writ petition, but only due to the fact that the financial difficulties expressed by the petitioner in the waiver application has not been considered by the Tribunal, this Court is entertaining this writ petition by granting further reduction in the payment of the statutory pre-deposit.

7. Accordingly, the impugned order dated 13.09.2022 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in EPFA No.83 of 2022 is hereby quashed and the petitioner is directed to deposit 40% of the determined amount of Rs.61,81,826/-(Rupees Sixty one lakhs eighty one thousand eight hundred twenty six only) with the first respondent within a period of six weeks from the date of receipt of a copy of this order. On receipt of the said deposit, the Central Government Industrial Tribunal-cum-Labour Court, Chennai in EPFA No.83/2022 shall entertain the appeal and pass final orders on merits and in accordance with law as expeditiously as possible, preferably within a period of six months thereafter.

8. On deposit of 40% of the determined amount, as stated supra within the stipulated time, the respondents shall not take any coercive steps against the petitioner till the disposal of the appeal by the Central Government



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

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sr

Index: Yes/No

Speaking Order/Non-Speaking Order

To

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ABDUL QUDDHOSE,J.

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