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W.P.No.6843 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.6843 of 2011

Pullicar Mills Limited
Rep. by its Managing Director,
No.107, Sankari Road,
Tiruchengode – 637 211.

... Petitioner

Vs.

1.The Registrar,
Employees' Provident Fund Appellate Tribunal,
4th Floor, Core-2, SCOPE MINAR,
Lakshmi Nagar, New Delhi – 110 092.
Camp:Coimbatore.

2.The Regional Provident Fund Commissioner-II,
14-B Authority,
Employees' Provident Fund Organisation,
Sub-Regional Office,
S.J.Plaza, Anna Salai,
Salem – 636 004.

3.The Enforcement Officer,
Salem I Division,
Employees' Provident Fund Organisation,
Sub-Regional Office,
S.J.Plaza, Anna Salai,
Salem – 636 004.

... Respondents



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Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned proceedings of the second respondent in TN/SLM/SRO/PDC/130/Sal-1/14-B-PROCEEDING/2010 dated 25.02.2010 and that of the 1st respondent in ATA No.325 (13) 2010 dated 31.12.2010 and the consequential corrigendum dated 25.01.2011, quash the said proceedings and consequently restrain the 3rd respondent from initiating any recovery proceedings against the petitioner mill.

For Petitioner : Mr.Ramesh Venkatachalapathy

For Respondents 1 : Tribunal

For Respondents 2 & 3 : M/s.R.Meenakshi

ORDER

The relief sought by the petitioner in this writ petition is to call for the entire records in connection with the impugned proceedings of the second respondent in TN/SLM/SRO/PDC/130/Sal-1/14-B-PROCEEDING/2010 dated 25.02.2010 and that of the 1st respondent in ATA No.325 (13) 2010 dated 31.12.2010 and the consequential corrigendum dated 25.01.2011,



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quash the said proceedings and consequently restrain the 3rd respondent from initiating any recovery proceedings against the petitioner mill.

2. The case of the petitioner is that the petitioner spinning mill was established in the year 1936 and due to outdated machineries, lack of working capital, the petitioner spinning mill became sick and later, the same was declared as sick company on 25.07.1994. This being so, the second respondent issued a show cause notice cum levy order dated 26.10.2004 attracting penal provisions under Section 7-Q and 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1951 for a sum of Rs.4,04,783/- for the period February 1999 to February 2003 and a sum of Rs.14,77,294/- for the period November 1996 to February 2003 respectively. The show cause notice of the second respondent is for damages and penal interest for a period which gives statutory exemption to the petitioner from making any contributions. Therefore, the petitioner challenged the order by filing writ petition in W.P.No.1309 of 2005 before this Court and the same was set aside on 19.10.2006.



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2.1. Subsequent to the issuance of aforesaid order dated 19.10.2006, the respondents have issued fresh show cause notice dated 15.07.2009 imposing the damages on the petitioner. Moreover, the respondents have mechanically worked out the damages against the interest of the petitioner. Even though the petitioner has represented a written objection before the respondents, the respondents have passed the order imposing damages for the period 3/2003 to 3/2005 to the tune of Rs.8,49,865/- on 25.02.2010. Therefore, the petitioner filed an appeal before the first respondent in A.T.A.No.325(13)2010, however, without hearing the petitioner properly, the first respondent passed an order dated 31.12.2010 and later issued a corrigendum dated 25.01.2011 in ATA No.325(13)/2010. Aggrieved over the same, the petitioner has filed this writ petition.

3. When the matter was taken up for hearing, learned counsel for the petitioner submitted that the damages imposed under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1951 comes to a sum of Rs.8,49,865/-, out of which, by way of interim order passed by this



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Court on 28.04.2011, a sum of Rs.2,59,100/-, being the 25% of the total damages amount was deposited by the petitioner on 28.04.2011. Hence, the remaining amount payable to the respondents is a sum of Rs.5,90,765/- and for paying the same, the learned counsel seeks time of eight equal monthly installments. He has also filed a calculation memo dated 27.04.2023 to that effect.

4. Considering the submission made by the learned counsel for the petitioner, the following directions are issued:

(i) The said sum of Rs.5,90,765/-, the balance damages shall be paid by the petitioner in 7 equal monthly installments.

(ii) The first installment will commence from May 2023 and the last installment will end on November 2023.

(iii) Each monthly installment has to be paid on or before 15th of every calendar month.

(iv) In case of any default in any of the installments, the respondents are at liberty to proceed against the petitioner, in the manner known to law.



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5. This writ petition is disposed of with the above direction. No costs.

25.04.2023

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Index : Yes/No

Speaking Order : Yes/No

Netural Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

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