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W.P.No.8368 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.8368 of 2022

M/s.Kriticons Ltd.,
Authorised by its Managing Director,
V.Dharmendra Kumar Jain,
Ceebros Centre, No.3, 4th Floor,
No.45, Montieth Road,
Chennai – 600 008.
Petitioner

...

Vs.

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
Royapettah, Chennai – 600 014.
2. The Enforcement Officer,
Employees Provident Fund Regional Office,
Royapettah, Chennai – 600 014.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's reply, dated 31-01-2022 in the light of the guidelines issued by the Ministry of Labour and Employment vide proceedings No.C-11/20/76/Misc./2020/CBE/TN/027, dated 14.02.2020.



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For Petitioner : Mr.R.Nilavazhagan

For Respondents : Mr.T.R.Sundaram for R1

ORDER

The petitioner company was incorporated under Companies Act, 2013 and the object of the Company is to carry out turnkey interior works contract etc., They are doing majority of their work through contractors and they engage only those contractors who are having independent Employees' Provident Fund (E.P.F) Code. However, the 2nd respondent viz., the Enforcement Officer, Employees Provident Fund Regional Office, Royapettah, Chennai had passed a Provisional Assessment Order under the caption “Inspection Notice” vide his proceedings No.TN.RO-CHN1/49343/EO/Div-28)REGL/2022, dated 18.01.2022 calling upon the petitioner to remit a sum of Rs.28,47,424/- for the period from April 2019 to November 2021, in respect of regular employees and further directed the petitioner to remit a sum of Rs.6,86,04,840/- for the period from April 2019 to November 2021 in respect of contract labourers engaged by them. According to the Writ Petitioner, the Employees Provident Fund Authority is not entitled to



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recover either the Provident Fund Contribution or damages from the Principal Employer in respect of employees engaged through contractors. Hence, they filed the present Writ Petition.

2. Mr.R.Nilavazhagan, learned counsel for the petitioner contended that the 2nd respondent without conducting any enquiry, had issued the inspection notice, dated 18.01.2022 and in this regard, the petitioner company sent a detailed reply, dated 31.01.2022 to the 2nd respondent in which they had requested the 2nd respondent to withdraw the notice issued by them. It is his further contention that the respondents are bound to determine the amount only by conducting proper enquiry as contemplated under Section 7 A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 as the Ministry of Labour and Employment vide proceedings No.C-II/20/76/MISC/2020/CBE/ TN/027, dated 14.02.2020 had revised the procedure for initiating action under Section 7 A of the Act. According to him, the Assessing Officers are following different yardsticks for initiation of proceedings under Section 7-A of the Act and therefore, he prayed to consider the reply sent by the



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petitioner on 31.01.2022 to the 2nd respondent before proceeding with further course of action.

3. Mr.T.R.Sundaram, learned counsel for the respondents contended that the reply submitted by the present Writ Petitioner would be considered on merits.

4. According to the petitioner, the 2nd respondent had straight away issued the inspection notice without conducting any enquiry. In such circumstances, the 2nd respondent should atleast consider the reply of the petitioner one way or the other and therefore, without going into merits of the case projected by the petitioner either in his affidavit or in his reply, the 2nd respondent is directed to consider the reply, dated 31.01.2022 submitted by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.



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5. With the above observation, this Writ Petition is disposed of.

No costs.

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Index: Yes/No

Speaking/Non-Speaking order
vum

To

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
Royapettah, Chennai – 600 014.
2. The Enforcement Officer,
Employees Provident Fund Regional Office,
Royapettah, Chennai – 600 014.

R. HEMALATHA, J.



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