IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.NO.693 OF 2013

The Management
Sri Ambal Mills Ltd.
89, Rathina Sabapathy Street,
Cooperative Colony,
Coimbatore – 641 038.
Rep. By C.D.Menon
Director ... Petitioner

Vs.

1.The Asst. Provident Fund Commissioner
Employees Provident Fund Organisation
Regional Office
Bhavishyanidhi Bhavan
P.B.No.3875, Dr.Balasundaram Road,
Coimbatore – 641 018.

2.The Recovery Officer
Employees Provident Fund Organisation
Regional Office
Bhavishyanidhi Bhavan
P.B.No.3875, Dr.Balasundaram Road,
Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the 2nd respondent, Recovery Officer, Employees Provident Fund Organisation, Regional Office, Bhavishyanidhi Bhavan, P.B.No.3875, Dr.Balasundaram Road, Coimbatore – 641 018 from demand interest under Section 7Q of the Act for the period from December 1996 to 01.07.1997 pursuant to the order dated 11.12.2012.

For Petitioner : Mr.S.Jayaraman

For Respondents : Mr.C.Kulanthaivel

O R D E R

This writ petition is filed for issuance of writ of mandamus forbearing the second respondent – Recovery Officer, Employees' Provident Fund Organisation, from demanding interest under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, for the period from December 1996 to 01.07.1997.

2. The second respondent by a communication dated 11.12.2012 directed to petitioner to pay the dues as per the working sheet annexed with the order. From the working sheet, it is seen that the second respondent has calculated interest for the period from December 1996 to June 1997.

3. The petitioner is a Company covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 *(Shortly "the Act")*. The petitioner admitted that due to sudden recession in the textile industry, the petitioner suffered a set back in their business and that on account of financial loss, there was some delay in meeting the statutory commitments particularly towards remittance of provident fund contribution. The respondent issued show cause notice to the petitioner on 23.07.2009 calling upon the petitioner to show cause as to why interest under Section 7Q of the Act should not be levied for the delayed payment made by the petitioner for the period from November 1996 to November 1997.

4. It is the case of the petitioner that the petitioner submitted a reply and participated in the enquiry disputing the claim towards interest for the period from November 1996 to November 1997. Despite the petitioner's positive case that the respondents are not entitled to levy interest under Section 7Q of the Act, prior to 01.07.1997, since Section 7Q of the Act itself came into force only on 01.07.1997, the second respondent issued a notice in

September 2009 calling upon the petitioner to pay a sum of Rs.33,25,792/- towards interest payable under Section 7Q of the Act.

5. Further, it is the case of the petitioner that they preferred an appeal in ATA No.96(13)/2012 before the Employees Provident Fund Appellate Tribunal, New Delhi, challenging the order passed by the respondent in September 2009, levying interest and damages under Section 14-B of the Act for the period from November 1996 to November 1997. The Tribunal has held that interest on the amount due can be claimed only with effect from 01.07.1997 and that the appeal was thus disposed of holding that the petitioner is not liable to pay any interest for the period prior to 01.07.1997.

6. The respondents have not questioned the findings of the Tribunal, dated 09.04.2012 in ATA No.96(13)2012. Despite the order passed by the Appellate Tribunal dated 09.04.2012, the respondents appears to have directed the petitioner to pay interest for the defaulted period. The petitioner,

therefore, is constrained to file the above writ petition with a prayer for issuance of writ of mandamus.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

8. The learned counsel for the respondents submitted that the respondents have already issued a revised working sheet, which is in the form of corrigendum. The learned counsel for the respondents has admitted the legal position that the respondents are not entitled to calculate interest for the period prior to 01.07.1997.

9. The prayer in the writ petition is only for a mandamus forbearing the respondents from demanding interest for the period from December 1996 to 01.07.1997. The petitioner has not come forward challenging any order demanding interest. Therefore, the prayer in the writ petition is in tune with the admission of the respondents, as regards the

liability of the petitioner towards interest under Section 7Q of the Act. Since the learned counsel appearing for the respondents stated that the revised demand by way of a corrigendum is also sent, this Court does not express any opinion on such demand, if it is otherwise in accordance with the provisions of the Act. It is made clear that any amount levied or collected prior to amendment, such levy or collection or adjustment is illegal. In the communication demanding interest, it is not clear as to how interest component was calculated. The letter dated 11.12.2012 demanding Rs.14,74,746/- is not in order as interest is calculated when remittance is before 05.01.2007.

10. In fine, the writ petition is allowed. No costs. It is open to the respondents to demand interest under Section 7Q of the Act from 01.07.1997, in accordance with law.

02.03.2023

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

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S.S.SUNDAR, J.

TK

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