IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition Nos.9068 of 2015 and 28284 2023
& WMP No.27804 of 2023 & MP.No.1 of 2015

M/s.Nikkans Textiles,
rep. by its Managing Partner,
Mr.Velusamy,
Amar Jothi Garden,
S.F.No.213, 15, Velampalayam,
Tiruppur-641 652 ..Petitioner in both Wps.

vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore -641 028

2.The Enforcement Officer,
Employees Provident Fund Organisation,
District Office,
No.66, AVP Lay out Road, 1st Street,
Near Post Office, Gandhi Nagar Post,
Tiruppur-641 603 ..respondents in WP.No.9068 of 2015

3. The Recovery Officer,
Employees Provident Fund Organization,
District Office,
No.497, 1st Floor,

M/s.Muthusamy & Bros Industrial Complex,
Palladam Road,
Tiruppur-641 604.

4.The Authorized Officer,
District Office,
No.487, 1st Floor,
M/s.Muthusamy & Bros Industrial Complex,
Palladam Road,
Tiruppur -641 604. ... Respondents 1 to 4 in WP.28284 of 2023

PRAYER in WP No.28284 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned notice dated 29.08.2023 made in Ref.No.CB/TPR/23/28868/2023-24/2410 issued by the third respondent and to quash the same.

PRAYER in WP No.9068 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned orders dated 11.03.2015 made in CC3(23)/TN/28868/8F/2015 passed by the first respondent and the consequential order dated 16.03.2015 made in TN/CBE/TN/28868/CC.2(23)/2015 issued by the second respondent, quash the same.

For Petitioner(in both Wps): Mr.T.Gowthaman, Sr.counsel for Mr.V.Anandhamurthy
For Respondents(in both Wps) : Mr.C.Kulanthaivel

COMMON ORDER

Writ Petition No. 9068 of 2015 has been filed seeking for issuance of Writ of Certiorari, to quash the impugned orders dated 11.03.2015 made in CC3(23)/TN/28868/8F/2015 passed by the first respondent and the consequential orders dated 16.03.2015 made in TN/CBE/TN/ 28868/CC.2(23)/2015 issued by the second respondent, quash them.

2.Writ Petition No.28284 of 2023 has been filed, praying for issuance of a Writ of Certiorari, seeking to quash the impugned notice dated 29.08.2023 made in Ref.No.CB/TPR/23/28868/2023-24/2410 issued by the third respondent and to quash the same.

3.The brief facts which are necessary for disposal of the present Writ Petitions, can be stated as under:

The petitioner company is carrying on the business of manufacturing and exporting knitted garments to various countries. The petitioner has been properly paying relevant taxes periodically without any default also complying with all the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short, 'the Act') by making contributions under the Act. While so, the 2nd respondent sent a report dated 01.05.2014 to the 1st respondent stating that the contribution to the fund was not properly paid by the petitioner firm. On the basis of the report of the 2nd respondent, the 1st respondent issued a show cause notice dated 07.02.2014 pointing out the default in remittance of contributions under the

Act and thereafter, by the impugned notice dated 11.03.2015, the petitioner was directed to pay a sum of Rs.46,55,119/- towards the arrears of the contributions. Again, another show cause notice dated 16.03.2015 was issued by the 2nd respondent, calling upon the petitioner to show cause as to why the petitioner should not be prosecuted for non-remittance of the arrears of the contributions under the Act.

4. Challenging these proceedings, the petitioner has filed W.P.No.9068 of 2015. During pendency of the said Writ Petition, it appears that the 3rd respondent issued impugned demand notice dated 29.08.2023, directing the petitioner to pay Rs.45,95,119/- towards arrears of contribution for the period 04/2012 to 10/2013. Challenging the same, the petitioner has filed W.P.No.28284 of 2023.

5.The learned counsel for the petitioner would submit that enquiry report sent by the 2nd respondent to the 1st respondent which was the basis for issuance of impugned proceeding was not served on the petitioner and that no final proceedings in regard to the enquiry conducted under Section 7(1) of the Act have been served on the petitioner thereby he was unable to defend the same.

6.The learned counsel appearing for the respondent, while reiterating the averments of the counter affidavit, has submitted that the representative of the petitioner has participated in enquiry proceedings and signed on 10.02.2015 and final proceedings were dispatched by registered post to the registered address of the petitioner on 26.02.2015 and it was acknowledged by the petitioner. Likewise impugned proceedings of the enquiry were also sent by registered post to the same address, but the same were returned, unserved. Hence, it was presumed that the proceedings were served. He would submit that quasi judicial enquiry conducted under Section 7A of the Act was impartial and the authority was given power to determine the dues by taking into the arguments of the covered establishment and the Officer representing the Organization (EPFO). The petitioner was given number of opportunities. It is further submitted that after obtaining interim stay in respect of criminal action and the attachment of their bank, although the petitioner had slept over the matter for eight long years, the respondent has acted in accordance with relevant provisions of the Act to recover the money from the petitioner which one liable to be paid towards EPF and

EDLI contributions of the employees.

7.Heard the learned counsel for both the parties and perused the entire materials placed on record.

8.Though it is stated that final proceedings under Section 7A have been dispatched to the petitioner, however, there is no record or acknowledgment produced before the Court to show that the said proceedings were served on the petitioner. Further, though the respondents have stated that in April 2015, the petitioner has taken a copy of 7A proceedings under RTI Act, even to that effect, there is no record. Therefore, in the absence of any record to show that the final proceedings have been served on the petitioner, the consequential impugned orders passed by the respondent cannot be sustained. The petitioner shall give an opportunity to contest Section 7A proceedings, and then pass appropriate orders.

9.Now, the learned counsel for the respondent has served a copy of the final proceedings under Section 7A proceedings to the learned counsel on record for the petitioner in the open Court, there by it is for the petitioner to proceed further in accordance with law.

10.Accordingly, these Writ Petitions are disposed of, giving liberty to the petitioner to take appropriate legal action in respect of Section 7A proceedings by following due process of law. No costs. Consequently, connected WMPs are closed.

22.12.2023

Index : Yes/No
Speaking order:Yes/No
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To

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Dr.D. NAGARJUN, J

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