IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21648 of 2018

MRF Limited,
Arakonam - Tiruttani Road,
Ichiputhur,
Arakonam - 631 003. ... Petitioner

Vs.

1. Employees' Provident Fund Organisation,
Represented by its Recovery Officer,
S-1, TNHB, Phase - III, Sathuvachari,
Vellore - 632 009.

2. M/s.Padma Associates,
Represented by its Proprietor G.Ramesh,
No.2/253, Library 2nd Street,
Kalki Nagar, K.G.Kandigai,
Tiruttani - 631 205.

3. M/s.Ceva Freight (India) Private Limited,
Represented by its General Manager,
4th Floor, Plot No.35 (SP), Developed Plots,
Guindy,
Chennai. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records connected with the impugned order Ref.TB/VLR/74567/RECY/2017/4981 dated 16.01.2018 and consequentially notice in Ref.No.TN/VL/74567/Recovery/2018/1654 dated 07.08.2018 on the file of the first respondent and quash the same.

For Petitioner	:	Mr.M.Vijayan for M/s.King and Patridge
For Respondents	:	Mr.P.K.Panneerselvam for R1 Not Ready Notice for R2 & R3

O R D E R

The impugned order in Ref.TB/VLR/74567/RECY/2017/4981 dated 16.01.2018 and the consequentially notice in Ref.No.TN/VL/74567/Recovery/2018/1654 dated 07.08.2018 passed by the first respondent are under challenge in the present Writ Petition.

2. The petitioner Company engaged the second respondent for doing certain contract works in the petitioner Company's factory premises

for a particular period. During the said period, the second respondent Contractor obtained independent PF Code vide TN/VLR/74567 and remitted the PF contribution in respect of the employees engaged for the contract work at the petitioner's factory. During April 2014, the petitioner Company received a summon dated 01.04.2014 from the first respondent wherein it was informed that the second respondent had defaulted in payment of the statutory contributions and administrative charges payable under the account / schemes and an enquiry in terms of Section 7A of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (hereinafter referred to as 'the Act') was initiated and summons were issued to the second respondent. Pursuant to the same, the petitioner's representative appeared before the first respondent and submitted all the relevant documents. After enquiry, it was found that, the second respondent Contractor had remitted the contribution from April 2010 to October 2013. In the meantime, the contract between the petitioner Company and the second respondent Contractor came to an end in the year 2013. By letter dated 28.11.2017, the first respondent issued a proceedings informing that the second respondent failed to remit the penal charges under Section 14B and 7Q interest dues under the said Act amounting to Rs.58,01,263/- for the period from 04/1996 to 03/2013, 04/2013 to 09/2015 and called upon the petitioner Company to pay the above said sum. On receipt of the letter, the petitioner Company sent a reply dated 12.12.2017 stating that the contract period with the second respondent was seized upon the termination of the contract in the year 2014 and no amount is payable to the contractor and hence, the proceedings may be initiated against the second respondent / Contractor for recovery of the dues and exempt the petitioner Company from further appearance of the subject matter.

3. The first respondent sent a letter dated 16.01.2018 stating that as a Principal Employer, the petitioner Company is liable to remit the statutory dues that has been assessed through a quasi-judicial enquriy under Section 14B of the Act. On receipt of the same, the petitioner Company sent a letter dated 25.01.2018 requesting three weeks time to furnish the reply and also have a personal hearing in this matter. However, the first

respondent passed an order dated 07.08.2018 directing the petitioner Company to remit a sum of Rs.57,67,862/- towards outstanding due of the second respondent / Contractor within a period of ten days from the date of receipt of the notice, failing which, appropriate recovery action will be taken as stipulated under Section 8B to 8G of the Act. Challenging the said orders dated 16.01.2018 and 07.08.2018, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner challenges the impugned orders on the ground that the first respondent had erred in levying penal interest and damages under Section 14B and & 7Q dues after the explicitly recorded in the proceedings dated 30.09.2015 that the entire PF contribution of Rs.1,00,53,678/- for the period from April 2010 to 2013 were remitted in full and submitted a nil report. The learned counsel further submits that the first respondent failed to note the judgment relied upon by him in the case of ***The Madurai District Central Co-operative Bank Ltd., rep by its Special Officer vs. Employees ' Provident Fund Organisation*** reported in ***2012 LLR 702***, wherein it was clearly held that with respect to

the Contractors, who are registered with the Provident Fund Department, having independent code number, they are to be treated as 'independent employer'. The first respondent has also failed to note that the second respondent is an independent employer with regard to recovery of penal interest and damages, since the second respondent is purely responsible for the delay in remitting the contributions. That apart, there is no opportunity of hearing given to the petitioner Company before passing the impugned order under Section 14B of the Act, which is a quasi-judicial proceedings wherein, the notice to the petitioner is mandatory. However, the petitioner Company was never made a party to the proceedings under Section 14B of the Act. It is also submitted that the first respondent is not entitled to demand the amount payable to the employees engaged by the third respondent by the second respondent. Hence, the learned counsel for the petitioner seeks indulgence of this Court to set aside the impugned orders passed by the first respondent.

5. A counter affidavit has been filed by the first respondent wherein it has been categorically stated as follows:

".....

8. A sum of Rs.57,67,862/- was levied against the second respondent for the belated remittances received in respect of his establishment during the period between April 2013 to September 2015. Since the second respondent was only a contractor and the work done by the employees of the second respondent related to the petitioner and the third respondent, the liability to pay the penal damages / Sec.7Q interest was duly apportioned among these two principal employers (the petitioner and the third respondent) according to the ratio of the remittances made by them and the period of delay in remittances.

9. Though the representatives of the petitioner consented to pay the penal damages / Sec.7Q interest of Rs.16,81,186/- initially during the inquiry proceeding, by an inadvertent error, a notice bearing Reference No.TN/VL/74567/Recovery/2018/1654 dated 07.08.2018 (impugned notice) was issued to the petitioner wrongly mentioning the dues as Rs.57,67,862/- instead of

Rs.16,81,186/- which relates to the petitioner. In other words, the dues payable by the petitioner was wrongly claimed as Rs.57,67,862/- instead of Rs.16,81,186/-.

.....

16. As regards the contention of the petitioner that the contract with the second respondent ceased in the year 2014, it is stated that the liability to pay the penal damages / Sec.7Q interest relates to the period April 2010 to October 2013 and any subsequent termination of contract with the second respondent cannot have the effect of absolving the petitioner of his liability to pay the penal damages / Sec.7Q interest for the belated remittances received during the period of contract with the second respondent.

17. It is stated that the second respondent is registered as an establishment under the provisions of the Act and the information with regard to the Principal employers (viz., the petitioner and the third respondent) were not brought before the inquiry authority at the time of inquiry under Section 14-b of the Act and the matter was decided ex-parte. Hence, the petitioner could not be heard at the time of levy of penal damages under Section

14B of the Act.

18. As admitted in the previous paragraphs, the Recovery Officer had, on the basis of the recovery certificate forwarded by the authorized officer, claimed a sum of Rs.57,67,862/- whereas the liability of the petitioner is only Rs.16,81,186/-. This error has been rectified in the records of the first respondent."

6. Considering the submissions made on behalf of the learned counsel for the petitioner and the first respondent and most specifically the counter filed by the first respondent, this Court is of the view that since the Recovery Officer had, on the basis of the recovery certificate forwarded by the authorized officer, claimed a sum of Rs.57,67,862/- whereas the liability of the petitioner is only Rs.16,81,186/- and that the error has been rectified in the records of the first respondent, this Court is inclined to allow the present Writ Petition.

7. Accordingly, this Writ Petition is allowed by quashing the

impugned orders dated 16.01.2018 and 07.08.2018 passed by the first respondent and consequently, remitting the matters back to the first respondent for passing necessary orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order after providing an opportunity of hearing to the petitioner as well as the second respondent. No costs.

21.09.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Recovery Officer,
   Employees' Provident Fund Organisation,
   S-1, TNHB, P hase - III, Sathuvachari,
   Vellore - 632 009.

2. The Proprietor,
   M/s.Padma Associates,
   No.2/253, Library 2nd Street,
   Kalki Nagar, K.G.Kandigai,
   Tiruttani - 631 205.

M.DHANDAPANI, J.

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