IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.12404 of 2021
and
WMP.No.13194 of 2021

S.Muthuraju ...Petitioner

Vs.

Regional PF Commissioner – I,
Employees Provident Fund Organisation,
Sub-Regional Office-1,
S.J.Plaza, Swarnapuri,
Salem – 636 004. ...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the proceedings / order dated 27.04.2021 (CB/SLM/COMP-II/E-I/71634/7A-Inquiry/PROCEEDINGS/2021) passed by the respondent in the matter of Inquiry under Sec.7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 in respect of Sri Textile Erode Private Limited, Erode (under Liquidation) and quash the same.

For Petitioner : Mr.S.Sethuraman

For Respondent : Mr.P.K.Panner Selvam

**ORDER**

This Writ petition has been filed seeking quashment of the proceedings passed by the respondent in the matter of Inquiry under Sec.7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short EPF & MP Act) in respect of Sri Textile Erode Private Limited, Erode (under Liquidation).

2. Learned counsel for the petitioner submitted that, already the matter landed before the National Company Law Tribunal (in short 'NCLT'), and the NCLT appointed a liquidator and order of Moratorium also came to be issued. Once Moratorium order is issued, the Authority under EPF & MP Act has no jurisdiction to entertain application under Section 7A of the said Act and on the sole ground, the petitioner has come up with this Writ petition.

3. However, when the matter is taken up for hearing, it is brought to the notice of this Court that the issue involved in the present Writ petition is no longer *res integra*, and similar issue fell under the consideration of the Hon'ble Apex Court in the case of ***Sundaresh Bhatt,***

***Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*** in Civil Appeal No.7667 of 2021 dated 26.08.2022. For better appreciation, the relevant portion is extracted hereunder:-

> *"54. On the basis of the above discussions, following are our conclusions:*
>
> *i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the Respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The Respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
>
> *ii) After such assessment, the Respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.*
>
> *iii) In any case, the IRP/RP/liquidator can immediately secure goods from the Respondent authority to be dealt with appropriately, in terms of the IBC "*

4. A perusal of the above decision of the Hon'ble Apex Court makes it clear that, once Moratorium is imposed, the authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies by invoking the power under the relevant statutes, however, they are not entitled to recover the dues pending.

5. In the present case, as the company has already approached the NCLT, the order passed by the respondent for recovering the dues, in terms of the order passed under Section 7A of the Act could be only to the limited extent of assessing the dues payable and no recovery is permissible as held in the aforesaid decision. However, if the petitioner is aggrieved at the order under Section 7-A, is at liberty to file appeal before the Appellate Authority in terms of Section 7 I of the EPF & MP Act, 1952 challenging the said recovery. The period during which the case was pending before this Court shall stand excluded for the purpose of computation of limitation.

6. With the above directions, this Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

**10.08.2023**
**(1/2)**

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

To

Regional PF Commissioner – I,
Employees Provident Fund Organisation,
Sub-Regional Office-1,
S.J.Plaza, Swarnapuri,
Salem – 636 004.

**M.DHANDAPANI., J.**

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W.P.No.12404 of 2021
and
WMP.No.13194 of 2021
(1/2)

10.08.2023

WMP.No.13191 of 2021
in
W.P.No.12404 of 2021

**M.DHANDAPANI, J.**

Dispensed with for the present.

**10.08.2023**
(2/2)

skt