IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.06.2023**

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

W.P.No.26114 of 2014
and
M.P.No.1 of 2014

Indian Potash Limited,
727, Anna Salai,
Chennai - 600 006,
rep.by its Managing Director
Dr.P.S.Gahlaut ... Petitioner

Vs.

The Regional Provident Fund Commissioner - I,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent dated 27.08.2014 in Proceeding No.TN/MAS/2840/Exem/'C' Sec/CAI/2011 - 12 & 2012 - 13, and to quash the same.

For Petitioner : Mr.G. Anand
for M/s.T.S.Gopalan and Co.,

For Respondent : Mr.T.R.Sundaram

JUDGMENT

The petitioner challenges the order of the respondent in Proceeding No.TN/MAS/2840/Exem/'C' Sec/CAI/2011 - 12 & 2012 - 13 dated 27.08.2014.

2.The petitioner is covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. By virtue of Section 17(1)(a) of the said Act, exemption was granted to the writ petitioner. During the course of business, the writ petitioner had acquired five Sugar Units from M/s.Uttrapradesh State Sugar Corporation Limited. The five factories are located in Sakhotitanda, Rohanakalan, Jarwal Road, Siswa Bazar and Khadda. These establishments are registered with the Provident Fund Commissioner's Office in Meerut and Gorakhpur. The aforesaid establishments which have been acquired are NOT operating any Exempted

Trust and as stated above, are registered with the Regional Provident Fund Office.

3.Mr.G.Anand, learned counsel appearing for the petitioner would submit that it is being continued till date. After acquisition of these Companies in 2010, the non-wage workers were shifted to M/s.Indian Potash Limited Staff Provident Fund. However, the wage board workers continued to be registered with the respective Provident Fund Commissioner at Meerut and Gorakhpur.

4.In and around September 2013, a compliance audit inspection was conducted for the Indian Potash Limited Staff Provident Fund Trust. During the time of inspection, it was reported that only non-wage employees have been brought under the Exempted Trust and the wage board employees continued to have their registration as before. Finding a discrepancy in the same, a Show Cause Notice was issued on 18.11.2013.

5.During the course of enquiry, the writ petitioner had submitted that there are about 1700 wage board employees in the five Sugar Units and since they mainly belonged to the areas in and around Uttar Pradesh and are illiterates, the writ petitioner would find it administratively difficult to cater them centrally to Chennai. This explanation was not satisfactory and the impugned order came to be passed.

6.Heard Mr.G.Anand, learned counsel for the appellants and Mr.T.R.Sundaram, learned counsel for the respondent.

7.From the arguments, the entire matter turns on Condition 29 of Appendix - A of the revised conditions of grant of exemption under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Exemption is granted to a class of employees under Section 27A of the said Scheme. The terms of conditions are governed under Condition 27AA. Condition 29 of the revised conditions reads as follows:

> *"Condition 29: In case of any change of **legal status of the establishment** which has been granted exemption, as a result of merger, demerger, acquisition, sale, amalgamation, formation of the subsidiary, whether wholly owned or not etc., The exemption granted shall stand revoked and the*

establishment should promptly report the matter to the RPFC (Regional Provident Fund Commissioner) concerned for grant of fresh exemption."

8.A reading of this provision shows the conditions precedent for application of Condition 29 is that there should be a change in legal status of the establishment. It does not prevent an establishment from acquiring or selling its assets. If by virtue of the several modes mentioned under Condition 29, there is a change in legal status, it is only then the establishment loses the exemption.

9.The Judgment of this Court relied upon by the learned counsel appearing for the respondent in the case of **Sundaram Motors Limited, (Establishment of T.V.Sundaram Iyengar & Sons Private Limited), 180, Anna Salai, Chennai - 600 002, rep. by its General Manager** in **W.P.Nos.6763 and 16443 of 2008 dated 07.06.2011** does not improve the case of the respondent as it deals with the case of change in legal status of an establishment, which is not the facts in the present case.

10.In the present case, by virtue of acquiring the five Sugar Units the legal status of the Indian Potash continues to remain the same. There has been no change in the said status. Therefore, Condition 29 does not apply. No other condition has been pointed out for the purpose of revoking the exemption granted under Section 17(1)(a). As I have held the Condition 29 does not apply to the facts of the case, the basis of the impugned order stands removed. Consequently, the Writ Petition is allowed. The impugned order is quashed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

02.06.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps

To

The Regional Provident Fund Commissioner - I,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.

V. LAKSHMINARAYANAN, J,

mps

W.P.No.26114 of 2014
and
M.P.No.1 of 2014

02.06.2023