# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 31.07.2023**

**CORAM**

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

**W.P.No.22425 of 2023**
**and**
**W.M.P.Nos.21837 and 21838 of 2023**

M/s.Sellam Associates,
Engineering Contractors,
Rep. by its Partner,
Mr.K.Palanisamy,
1/3, Beeman Kattu Street,
Kollampalayam,
Erode – 638 002. ... Petitioner

Vs.

1. The Presiding Officer,
   The Central Government Industrial Tribunal-cum
   Labour Court, Shastri Bhavan,
   Chennai – 600 006.

2. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Regional Office,
   Steel Plant Road,
   Thalavaipatti,
   Salem – 636 302. ...Respondents

**Prayer:** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 1st respondent dated 07.12.2022 made in EPFA 118/2022, quash the same and consequential direction to the 2nd respondent to drop further proceedings in connection with summon dated 13.06.2023 vide in NO.CB/SLM/DO-ED/RECOVERY/70836/SUMMON/2023/183.

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| For Petitioner | : | Mr.S.Saravanan |
| For Respondents | : | Mr.R.Vishnu for R2 |

**ORDER**

This writ petition has been filed seeking for issuance of a writ of certiorarified mandamus to quash the order of the 1st respondent dated 07.12.2022 made in EPFA 118/2022, and consequential direction to the 2nd respondent to drop further proceedings in connection with summon dated 13.06.2023 vide in NO.CB/SLM/DO-ED/RECOVERY/70836/SUMMON/2023/183.

2. It is the case of the petitioner that the petitioner is a partnership

company, engaged in Civil Engineering contract work. The petitioner company is a covered establishment under Employees Provident Funds & Miscellaneous Provision Act, 1952 (in short 'the Act') with effect from 12.10.2007. Due to lack of business activity in the petitioner establishment, the petitioner company became default of provident funds dues since 2013 as well as non-submission of statutory returns. The petitioner company has also not submitted Income Tax returns for the period from 2012-13 to 2014-15. Subsequently, the second respondent vide order dated 07.02.2019 initiated the proceedings u/s. 7(A) of the Act directing the petitioner to remit a sum of Rs.41,02,548/- for the period from 01/2013 to 03/2015. Challenging the same, the petitioner preferred an appeal before the first respondent, which dismissed vide order dated 07.12.2022 on the ground of inordinate delay which occurred in filing appeal, as against the order dated 07.02.2019 passed by the second respondent. Challenging the order passed by the first respondent dated 07.12.2022, the present writ petition has been filed.

3. The learned counsel for the petitioner submits that though the petitioner has right to prefer an appeal before the appellate authority within a period of 60 days in terms of Rule 7 Clause II of the Employees Provident Funds Appellate Tribunal (Procedure) Rule 1997, the Tribunal in extraneous circumstances and on reasoned grounds may extend the period of Limitation to another 60 days which must not exceed beyond 120 days. He further submitted that the Hon'ble Apex Court taking cognizance of the hard situation during the course of COVID-19 pandemic extended the relaxation for another 90 days for the purpose of limitation even after the expiry of the relaxed period. Hence, he prayed to quash the impugned order dated 07.12.2022 passed by the first respondent.

4. The learned counsel appearing for the second respondent submitted that though the second respondent initiated proceedings u/s.7(A) of the Act on 07.02.2019, the said order was hardly challenged by the petitioner only on 05.08.2022. Admittedly the limitation period of 120 days to file an appeal ought to be expired on June, 2019, which is much prior to the

COVID-19 pandemic. Hence, the appeal preferred by the petitioner cannot be admitted on the point of limitation on any score. Accordingly, the decision rendered by the Hon'ble Apex Court excluding the entire period from 15.03.2020 to 28.02.2022 for the purpose of limitation due to outbreak of COVID-19 pandemic will not be applicable to the present case on hand. Hence, he prayed to dismiss the writ petition.

5. Heard learned counsel appearing on either side and perused the materials placed on record.

6. Though it is the stand taken by the learned petitioner's counsel that the petitioner has right to prefer an appeal before the appellate authority in terms of Rule 7 Clause II of the Employees Provident Funds Appellate Tribunal (Procedure) Rule 1997, the Tribunal on reasoned ground may extend the limitation period upto 120 days and also relied upon the decision of the Apex Court, which relaxed the limitation time and again considering the COVID-19 situation. Per contra learned counsel for the second respondent contended that besides, even the Hob'ble Apex Court has relaxed

the period by another 90 days, the petitioner has not come forward to file the appeal within the prescribed extended time limit till June 2019 from the date of order passed by the second respondent dated 07.02.2019.

7. This Court after carefully considering the contentions of the learned counsel on either side, is of the view that the inordinate delay caused by the petitioner cannot said to be a sufficient ground for consideration, since, the petitioner has not chosen to file an appeal within the extended limitation period i.e.,120 days till June, 2019, which is much prior to the COVID-19 pandemic. Thus, the reason pointed out by the learned counsel for the petitioner cannot be acceded to. Hence, this Court cannot grant any affirmative direction in favour of the petitioner. However, liberty granted to the petitioner to deposit the entire amount by way of six (6) installments, the first of which will be on 05.08.2023, failing which, it is open to the respondent to take appropriate action in the manner known to law.

8. With the above reasons and direction this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**31.07.2023**

*(rap)*

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

**Office to Note: Issue order copy on 01.08.2023**
To

1. The Presiding Officer,
   The Central Government Industrial Tribunal-cum
   Labour Court, Shastri Bhavan,
   Chennai – 600 006.

2. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Regional Office,
   Steel Plant Road,
   Thalavaipatti,
   Salem – 636 302.

**M.DHANDAPANI,J.**

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