IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.3030 of 2023
and
C.M.P.No.25074 of 2023

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

...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

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 31.07.2023 passed in W.P.No.22425 of 2023.

For Appellant : Mr.B.Saravanan
For Respondent : Mr.R.Vishnu (R2)

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J U D G M E N T

(JUDGMENT of the Court was delivered by ***S.VAIDYANATHAN, J***)

Challenging the order passed by the learned single Judge dated 31.07.2023 in W.P.No.22425 of 2023, in confirming the order of the Tribunal dated 07.12.2022 passed in E.P.F.A.No.118 of 2022, the Management has preferred the above Writ Appeal.

2. The case of the Appellant/Writ Petitioner is that it is a partnership Company, engaged in Civil Engineering contract work. The Appellant Company is a covered establishment under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (in short 'the Act') with effect from 12.10.2007. It is further stated that due to lack of business activity in the Appellant establishment, the Appellant Company defaulted in making provident fund contributions since 2013 and also submission of statutory returns. It is further stated that the petitioner company has also not submitted Income Tax returns for the period from 2012-13 to 2014-15. Subsequently, the 2nd Respondent, vide order dated 07.02.2019, initiated 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 which, the Appellant preferred an Appeal before the 1st

Respondent, which was dismissed vide order dated 07.12.2022, on the ground of inordinate delay which occurred in filing the appeal, as against the order passed by the 2nd Respondent dated 07.12.2022. Assailing the said order dated 07.12.2022, W.P.No.22425 of 2023 has been preferred by the Appellant.

3. The learned Single Judge, on 31.07.2023, dismissed the writ petition holding as under:

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

4. Aggrieved, the present Writ Appeal has been preferred by the Appellant/Writ Petitioner.

5. Heard both sides. Perused the records.

6. A perusal of the records shows that after due procedure, the 2nd Respondent passed an order on 07.02.2019 directing the Appellant to pay a sum of Rs.41,02,548/-. Aggrieved by the same, a review was preferred before the Regional Provident Fund Commissioner, Salem on 28.03.2019 and the same was dismissed on 27.05.2019. The order of the Authority under Section 7-A of the Act got merged with the order passed under Section 7-B of the Act. However, the Appellant has chosen to file an Appeal before the Tribunal questioning the orders dated 07.02.2019 and 27.05.2019 passed by the Authority under Section 7-A of the EPF Act. While preferring an Appeal, it was pointed out that there was a delay of 1,232 days, as could be seen from the affidavit of the Appellant dated 27.07.2022.

7. The main contention of the Appellant is that due to Covid-19, they were not in a position to approach the Tribunal in time and the period during which Covid-19 was in its peak, shall be excluded and by excluding the said period of Covid-19, the delay is minimal and the same has got to be condoned.

8. The learned Tribunal as well as the learned Single Judge has not rightly accepted the said contention. Even going by the pleadings of the Appellant, the order under Section 7-A of the Act was passed on 07.02.2019 and the Appeal ought to have

been taken on file within a period of 120 days and that period expired in June 2019. Though review has been filed well within the time, the order in the review was passed on 27.05.2019 and at least, Appeal should have been filed within 120 days from 27.05.2019. It is common knowledge that Covid-19 struck the entire world and a person affected in India was identified in December 2019 and Covid lockdown ended during last week of March 2020 and there was more than 6 months delay, even after the order under review is taken into account. That apart, after the expiry of two years, where relaxation to condone the delay was given by the Apex Court, the Appellant has not preferred the Appeal well within time. In that process, the total delay of 1,232 days has occurred. When the outer time limit prescribed under the Act got expired, the Tribunal became *functus officio* and Tribunal was right in rejecting the plea of the Appellant which was rightly not interfered with, by the learned single Judge.

9 Though initially we thought of condoning the delay to enable the Tribunal to entertain the appeal, the fact that the Appellant has not paid any instalment till now is not in dispute and now the learned counsel for the Appellant states that the Appellant seeks further time to pay the amount in instalments. On a perusal of the order impugned dated 31.07.2023, it is seen that the learned Single Judge has already granted six months time to pay the amount in instalments, however, as on date, not even a penny has been paid by the Appellant. Since the Appellant is willing to pay the amount in instalments,

we expect that the amount shall be paid in six instalments, commencing last working day of November 2023. In case, the amount is not paid or if there is a default in any one of the instalments, it is open to the EPF authorities to take coercive action, including the steps for civil imprisonment.

This Writ Appeal stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.,] [K.R.S., J]
31.10.2023

Index: Yes / No
Internet: Yes / No
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Note: Issue order copy on 22.11.2023

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.

S. VAIDYANATHAN,J.,
and
K.RAJASEKAR,J

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