



WEB COPY



W.P.No.30610 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM :

THE HON'BLE MRS. JUSTICE R.N. MANJULA

W.P.No.30610 of 2023

M/s.Empee Distilleries Limited,
Rep.by its Authorised Signatory Mr.P.R.Kannan,
having office at 72,
Greams Road, Thousand Lights,
Chennai – 600 006.

... Petitioner

Versus

- 1.The Assistant Provident Fund Commissioner (PDC),
Office of the Regional Provident Fund Commissioner,
R-40, A-1, TNHB Shopping-cum-Office Complex,
Mugappair Road, Mugappair East,
Chennai – 600 037.
- 2.The Recovery Officer,
Office of the Regional Provident Fund Commissioner,
R-40, A-1, TNHB Shopping-cum-Office Complex,
Mugappair Road, Mugappair East, Chennai – 600 037.
- 3.The Central Board of Trustees,
Employees Provident Fund Organisation,
No.14, Bhavishya Nidhi Organisation,
Bhikaji Cama Palace,
New Delhi – 110 066.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Prohibitory Order dated 25.09.2023 bearing TN/RO/AMB/RECOVERY/Area-5/22205/RRC-9710/2023 passed by the 2nd respondent in respect of Petitioner Company and its bank accounts and the Notice issued by the 2nd respondent on 27.09.2023 bearing TN/RO/AMB/RECOVERY/Area-5/22205/RRC-9710/2023 and quash the same and consequentially forbear the 1st and 2nd respondent from recovering any amount towards interest or damages on belated payments of contributions, pending disposal of the three appeals filed by the Petitioner Company before the 3rd respondent dated 22.09.2022.

For Petitioner : Mr. P. H. Aravind Pandian,
Senior Counsel.
for Mr. AR.Karthik Lakshmanan

For Respondents : Mrs. R. Meenakshi,
Senior Counsel (for EPF)
for Mr.P.K.Panneerselvam

ORDER

Aggrieved by the impugned orders dated 25.09.2023 and 27.09.2023 passed by the 2nd respondent/the Recovery Officer, this writ petition has been filed seeking a Writ of Certiorarified Mandamus, for the purpose of quashing the same and consequently forbear the 1st and 2nd respondents from recovering any amount towards interest or damages on belated payments of



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contributions, pending disposal of the three appeals filed by the Petitioner Company before the 3rd respondent dated 22.09.2022.

2.The Petitioner Company has been served with three notices by the second respondent under Form No.E.P.F. C.P.1 calling upon the Petitioner Company to pay a sum of Rs.84,66,214/- relating to the period January -2018 to June -2021 and a sum of Rs.9,378/- relating to the period February-2005 to July-2008 and another sum of Rs.1,23,041/- relating to the period June-2001 to April – 2003 within 15 days from the date of receipt of the said notices, failing which, recovery shall be made in accordance with Sections 8B to 8G of the Employees' Provident Fund and Miscellaneous Provisions (EPF & MP) Act, 1952.

3.Aggrieved by the above, the Petitioner Company filed three appeals dated 22.09.2022 before the 3rd respondent/ The Central Board of Trustees, Employees Provident Fund Organisation, New Delhi, through the Assistant Provident Fund Commissioner, EPFO, Ambattur, Chennai/ the 1st respondent, before the CBT.



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4. Mrs. R. Meenakshi, learned Senior Counsel appearing for the EPF takes notice and submitted that as per Section 7-I of the EPF Act, the petitioner is expected to file an appeal, only before the Employment Appellate Tribunal and the petitioner wantonly filed proceedings before CBT and now has filed the present Writ Petition, so as to prevent the respondents 1 and 2 from initiating the recovery proceedings and it is noted that the petitioner had mooted the appeal only through the 1st respondent. The 1st respondent ought to have returned the appeal, instead of forwarding it to the 3rd respondent/CBT. The action of the first respondent is clear in the impugned order dated 27.09.2023 itself, wherein, it has been stated that while forwarding the application for waiver of damages and interest in respect of M/s Empee Distilleries Pvt. Ltd., the competent Authority has not recommended for any waiver of damages and interest.

5. The fundamental point is whether the first respondent has got any obligation to forward it to the third respondent or not. Since the first respondent himself has admitted that he has forwarded the application to CBT, instead of informing the Petitioner Company that the said appeals have to be presented before the appropriate authority who is competent to deal with the appeals. So, the fact remains that the appeals have been



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forwarded to the authority who is not competent to deal with the appeals under the EPF Act.

6. In view of the above, the following orders are passed:

(a) The copy of the order to be marked to the third respondent, to enable him to return the appeals forthwith to the Petitioner Company;

(b) Upon receipt of this order copy, the third respondent has to return the appeals forthwith to the Petitioner Company;

(c) The Petitioner Company is directed to represent the appeals before the Appellate Tribunal within a period of two weeks from the date of receipt of a copy of this order, in the required format contemplated under the Act. More specifically, in accordance with the Section 7-I r/w the relevant rules.

7. In order to enable the Appellate Tribunal to appreciate the Petitioner's appeals on merits, it would be appropriate to direct the respondents not to initiate any recovery proceedings and hence, the impugned order dated 25.09.2023 is quashed temporarily for the purpose of enabling the petitioner to exercise the power before the appropriate forum.



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8. Accordingly, the Writ Petition is partly allowed. No costs.

20.10.2023

Index : Yes/No
Speaking / Non-Speaking order
Neutral Citation : Yes/No

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To:

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R.N. MANJULA, J.

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