IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.349/2024
(Vinar Ispat Ltd V Asstt. Provident Fund Commissioner, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A.J. Pathak, Advocate for the petitioner.
Mrs Sonali Saware-Gadhwe, Advocate for respondent.

CORAM : N.R. Borkar, J.
DATE : 04-10-2024.

This petition takes exception to the order dated 28-04-2022 passed by the respondent under Section 14B of the Employees Provident Funds and Misc. Provisions Act, 1952.

ii. By the order impugned, the respondent has directed the petitioner to pay damages of Rs.16,21,708/-, by way of penalty for delay in payment of EPF contribution.

iii. I have heard the learned Counsel for the petitioner and the learned Counsel for respondent on the point of maintainability of present petition.

iv. The learned Counsel for respondent submits that the remedy of appeal was available to the petitioner against the order impugned, however, the same was not availed. It is submitted that thus the present petition is not maintainable in view of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others vs Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020(4) Mh.L.J. (S.C.) 1***. It is submitted that relying upon the above decision of the Hon'ble Supreme Court, this Court in ***Siddhi Engineering vs Regional Provident Fund Commissioner***, reported in ***2024(2) Mh.L.J. 792***, in identical matter has declined to entertain the writ petition.

v. On the other hand, the learned Counsel for the petitioner submits that it is settled legal proposition that a party cannot be rendered remedy less.

vi. The Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others vs Glaxo Smith Kline Consumer Health Care Limited** (supra) in the matter arising out of Andhra Pradesh Value Added Tax, 2005, held that in a given case assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction or in violation of principles of natural justice and the High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However if the Writ Petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of that Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the Writ Petition of such a party as a matter of course. The Hon'ble Supreme Court has held that 'doing so would be in the teeth of the principle underlying the dictum of the three Judge Bench in **ONGC vs Gujarat Energy Transmission Corporation**, reported in **2017(5) Mh.L.J. (S.C.) 564**'.

vii. In the present matter it is not in dispute that against the order impugned the remedy of appeal was available to the petitioner. Admittedly the petitioner did not avail the said remedy. It is not the case of the petitioner, that the present petition was filed before expiry of period of limitation for filing appeal. In that view of the matter, the present petition cannot be entertained in view of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others vs Glaxo Smith Kline Consumer Health Care Limited*** (supra) and of this Court in ***Siddhi Engineering vs Regional Provident Fund Commissioner*** (supra). The petition, is, therefore dismissed.

viii. The application for amendment does not survive and the same is disposed of.

ix. The amount of Rs.8,10,854/- deposited by the petitioner with this Court be paid to the respondent with accrued interest, if any.

(N.R. Borkar, J.)