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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

W.P.No.189 of 2021
and W.M.P.No.256 of 2021

M/s.Suzlon Energy Ltd.,
Rep. by its Authorised Signatory,
Unit IV, Village, Thiruvandarkoil,
Mannadipet Commune,
Puducherry – 605 102. ... Petitioner

Vs

Regional Provident Fund Commissioner-II/OIC,
Employee Provident Fund Organisation,
Regional Office,
No.101, 100 Feet Road, Mudaliarpet,
Puducherry – 605 004. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Proceeding No.TN/RO-PDY/PC/1594/COMP/Div-II/7A/2020 and quash the proceedings dated 02.12.2020 and consequentially direct the respondent to hold enquiry demanding contribution from the petitioner only for the month of June 2010.

For Petitioner : Mr.S.Ravindran
Senior Counsel
for M/s.S.Bazeerahamed

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For Respondent : Mr.K.Srinivasamurthy

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ORDER

This Writ petition is filed challenging the order dated 02.12.2020 rejecting the petitioner's preliminary objection regarding the assessment period.

2. The petitioner is engaged in manufacture of wind operated electricity generator and its parts and is having its unit at Mannadipet Commune, Puducherry. Admittedly, the petitioner is covered under the provisions of EPF & MP Act (in short 'the Act') with Code No.PC-1594. On 19.01.2011, the respondent issued summons to the petitioner calling upon the petitioner to produce records for the month of June 2010 and thereafter, an enquiry was conducted in terms of Section 7A of the Act. By order dated 01.02.2012, the respondent held that the petitioner was liable to pay Rs.1,21,08,722/- as additional contribution for the period April 2010 to July 2011. The petitioner preferred an appeal in EPFA No.154 of 2017 before the Appellate Tribunal challenging the said order. The Appellate Tribunal by order dated 21.02.2020 allowed the appeal,

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directing the respondent to conduct fresh enquiry on the subject. Thereafter, the respondent issued summons on 09.07.2020 calling the petitioner for enquiry on 06.08.2020. On the day of enquiry, the petitioner raised preliminary objection stating that the enquiry should be restricted for the month of June 2010 only and the mistake committed in the earlier order dated 01.02.2012 in including the period April 2010 to July 2011 should not be repeated. The petitioner also stated that initiation of enquiry under Section 7A of the Act was against the circular of the Additional Central PF Commissioner (Compliance), dated 14.02.2020. By the impugned order, the respondent rejected the petitioner's preliminary objections stating that the earlier proceedings covered the period from March 2010 onwards and the objection as to the violation of the circular was not raised in the earlier proceedings. Aggrieved by the same, the petitioner has filed the above writ petition.

3. The learned Senior Counsel for the petitioner submitted that the earlier summon was issued on 19.01.2011 claiming contribution for the month of June 2010 only, but while passing the order in the 7A proceedings, the respondent claimed additional contribution for the

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period April, 2010 to July, 2011 (i.e.,) for the periods not covered by the summons. It is further submitted by the learned Senior Counsel that on appeal, the 7A order was set aside, directing the respondent to proceed afresh with the 7A enquiry. The learned Senior Counsel therefore submitted that on remand, the respondent ought to have confined the enquiry for the period June, 2010 only. In effect, the learned Senior Counsel submitted that when the Tribunal ordered for fresh enquiry, the enquiry ought to have been restricted to the period stated in the summons dated 19.11.2011. On such submissions, the learned Senior Counsel prayed that the impugned order be set aside and the writ petition be allowed.

4. On the other hand, the learned counsel appearing for the respondent submitted that after the remand order dated 21.02.2020 directing the respondent to conduct fresh enquiry under Section 7A, the respondent issued fresh summons on 09.07.2020 for the period from 04/2010 to 07/2011. The learned counsel further submitted that the contention of the petitioner that the fresh enquiry ought to have been restricted to the period June 2010 only as per the summon dated

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19.01.2011 is untenable, because the Tribunal had directed fresh enquiry and therefore, fresh summons was issued including the other period.

5. I have heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing on behalf of the respondent and I have perused the materials on record.

6. It is seen that in the summons dated 19.10.2011, the period stipulated was June 2010, but while passing the 7A order on 01.02.2012 assessment was made for the period from 4/2010 to 7/2011 and the order was passed claiming Rs.1,21,08,722/- as additional contribution for the aforesaid periods from the petitioner. When the petitioner challenged the said order before the Tribunal in EPFA No.154 of 2017, the authority while setting aside the order passed under Section 7A dated 01.02.2012 did not consider the objection to the summons. The Tribunal was very much aware that the order impugned before it covered the entire period from 4/2010 to 7/2011. When the Tribunal did not even consider the objection against the summons, but set aside the order on the ground that it was cryptic, the contention of the learned counsel that the fresh enquiry

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ought to have been restricted to the period 6/2010 cannot be accepted. It is further pertinent to note here that the petitioner did not raise any objections to the letter dated 23.05.2011 whereunder the petitioner was informed that certain allowances were required to be considered as basic wages for the period 03/2010. The petitioner's failure to object to the aforesaid letter only shows that the present objection is an afterthought. In any event, in my view, the anamoly if any, in the summons dated 19.01.2011 having been addressed in the summons dated 09.07.2020, the petitioner cannot be heard to say that the enquiry should be restricted to 06/2010. The respondent has rightly rejected the preliminary objection raised by the petitioner. The reasoning of the respondent that confining the enquiry to one month would raise issues of inconsistency cannot also be faulted. Even the reasoning of the Tribunal for rejecting the plea of violation of internal advisory as being an internal communication is acceptable because an internal advisory is only an internal communication and the same is not enforceable by a third party.

7. In view of the above discussions, I find no merit in the writ petition. The writ petition is accordingly dismissed. No costs.

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Consequently, the connected miscellaneous petition is closed.

14.03.2024

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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Regional Office,
No.101, 100 Feet Road, Mudaliarpet,
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N.MALA,J.,

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