



W.P.No.6050 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.6050 of 2019

and

WMP.Nos.6875 & 6877 of 2019

M/s.Arcot Textile Mills Ltd.,
Rep., by its Authorised signatory,
Mr.Subodh Chopra,
Ulagamkathan Post,
Kallakurichi Taluk,
Villupuram District.

...Petitioner

versus

1. The Employees Provident Fund Organisation
Rep., by the Central Provident Fund Commissioner,
Bavishya Nidhi Bhavan,
No.14, Bikaji Cama Place,
New Delhi-110 066.
2. The Additional Central Provident Fund Commissioner
The Employees Provident Fund Organisation,
Bavishya Nidhi Bhavan,
No.14, Bikaji Cama Place,
New Delhi-110 066.
3. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, P.B.No.588,



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Sree Complex, D Block,
No.18, Madurai Road,
Trichy-620 008.

4. The Recovery Officer,
Regional Officer,
Employees Provident Fund Organisation,
Trichy.
5. The Enforcement Officer
District Office,
Employees Provident Fund Organisation,
Cuddalore and Villupuram Districts,
No.22, Nethaji Road,
Cuddalore-607 001

... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondents relating to the order of the 2nd respondent ref.No.RRL-11/18(1)2014/TN/45405 dated 26.03.2015 and communicated to the petitioner under cover of letter dated 26.10.2018 and quash the same and consequently direct the respondents to consider the waiver of damages levied on the petitioner in respect of the entire period as per the rehabilitation scheme sanctioned on 17.05.2012 in Case No.351 of 1998 by the Board for Industrial and Financial Reconstruction.

For Petitioner : M/s.T.Sai Krishnan

For Respondents : Mr.M.Palanimuthu



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ORDER

This Writ Petition is filed seeking for issuance of certiorarified Mandamus to quash the proceedings of the second respondent dated 26.03.2015 vide ref.No.RRL-11/18(1)2014/TN/45405 communicated to the petitioner as per letter dated 26.10.2018 and to direct the respondent to consider the waiver of damages levied on the petitioner in respect of the entire period as per the rehabilitation scheme sanctioned on 17.05.2012 in Case No.351 of 1998 by the Board for Industrial and Financial Reconstruction.

2. Heard the learned counsel for the petitioner and perused the records.

3. It is submitted by the learned counsel for the petitioner that the petitioner company is incorporated under the provisions of companies Act, 1956. The petitioner company has approached the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR) under the provisions of the sick Industrial Companies (Special Provisions) Act, 1985. The petitioner company approached BIFR vide



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case No.351 of 1998 and the same was decided on 17.05.2012, by which rehabilitation scheme was sanctioned in respect of the petitioner company. As per clause 10.3 of the rehabilitation scheme, the respondent/Provident Fund organisation was required to accept simple interest on unpaid amounts at the rate of 4% per annum instead of 12% per annum and to waive the balance of interest and damages levied or leviable on the Provident Fund dues till the cut off date and the cut off date was fixed in the scheme as 31.03.2010.

4. It is submitted the second respondent by order dated 23.07.2023 levied the damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as “EPF Act”) for the contributions payable by the petitioner for the period from 1992-93 to 2001-02 at Rs.56,51,442/- for the alleged failure to remit the dues within the stipulated time during that period. The petitioner has challenged the said proceedings by way of the Writ Petition and also by way of Appeal before the Appellate Authority. However, the petitioner was not successful as it the petitioner could approach the respondent for waiver as per the rehabilitation scheme formulated by BIFR. The petitioner further has paid arrears of PF



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contribution and interest under Section 7A of the EPF Act which are to the tune of Rs.94,27,334/-. The petitioner was informed by way of communication dated 10.08.2015 that the Central Board of Trustees of the respondent organisation has waived the penal damages of Rs.26,87,122/- and directed the petitioner to remit the balance dues of Rs.32,92,492/- for the period from July 1997 to April 1999 immediately.

5. It is submitted by the learned counsel for the petitioner that the Central Board of Trustees of the respondent organisation has waived penal damages only in respect of period during which the petitioner company has placed the issue before the BIFR, as per the case No.351 of 1998 until it was disposed of by way of formulating a scheme. Learned counsel would submit further that in respect of previous period the Central Board of Trustees of the respondent organisation has not considered the waiver of penal damages.

6. Learned counsel for the respondent has submitted that the the Central Board of Trustees of the respondent organisation has considered the previous period also however not inclined to grant any waiver of damages during the previous period. However on a perusal of the



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proceedings of final scheme, it is not clear as to whether the the Central Board of Trustees of the respondent organisation has considered the waiver of the damages for the period July 1997 to April 1999.

7. In view of the above, this Court is of the opinion that since the issue to waiver for the period July 1997 to April 1999 was not considered by the Central Board of Trustees of the respondent organisation, the petitioner shall be given liberty to approach to the Central Board of Trustees of the respondent organisation to waiver of the damages in respect of the said period as per the rehabilitation scheme sanctioned under BIFR. It is brought to the notice of this Court by the learned counsel for the petitioner that pending this Writ Petition, since Bank account of the petitioner company were attached. The petitioner has paid Rs.32,92,496/- towards the damages for the period July 1997 to April 1999.

8. In view of the above, this Writ Petition is disposed of, giving liberty to the petitioner to approach the Central Board of Trustees of the respondent organisation to seek for the waiver of the damages for the period July 1997 to April 1999 as per the scheme formulated on



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17.05.2012 by BIFR within four weeks from the date of receipt of copy of the order and within six weeks from the date of filing of such application, the the Central Board of Trustees of the respondent organisation is directed to dispose of the representation of the petitioner in respect of waiver of damages for the period July 1997 to April 1999. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2024

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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