WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.8481 of 2024
and
W.M.P.No.9428 of 2024

SAIL Refractory Company Ltd.,
Post Box No.565,
Salem 636 005.
Rep. By its General Manager (F&A) ...Petitioner

Vs.

The Assistant PF Commissioner
Employees Provident Fund Organization
Regional Office
Steel Plant Road,
Dalavaipatti, Salem – 636 302. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent in his proceedings No.CB/SLM/PDC/2949/S-1/14 B proceeding/2023-24 and quash his order dated 31.01.2024.

For petitioner : Mr.T.S.Gopalan and Co
For respondents : Mr.P.K.Paneer Selvam

ORDER

WEB COPY

This writ petition has been filed challenging the impugned order dated 31.01.2024 in proceedings No.CB/SLM/PDC/2949/S-1/7Q proceeding/2023-24 under Section 7 Q of the EPF and MP Act directing the petitioner to pay interest at 12% p.a. for loss caused to the Employees Provident Fund.

2. Heard, Mr.T.S.Gopalan the learned counsel for the petitioner and Mr.P.K.Paneer Selvam, learned counsel for the respondents takes notice on behalf of the respondents.

3. Burn Standard Ltd is involved in manufacturing refractory bricks and is covered under EPF Act. On 18.08.1965, the said company was exempted from contributing under EPF Act and was permitted to manage PF funds.

4. One of the conditions laid down by the EPFO is that the interest to be paid to the members should not be less than the rate declared by the EPFO and the funds available in the hands of the Trustees should be invested only in the securities approved by the EPFO. If the interest derived from the investment does not justify that the minimum rate of interest stipulated by the EPFO, then the difference should be made good by the employer and not charged to the Trust. Similarly, the trust fund should be

https://www.mhc.tn.gov.in/judis

WEB COPY

audited by a 3rd party auditor so as to ascertain the financial health of the Trust and furnish an assessment report to the effect whether any liability is likely to arise on EPFO.

5. Prior to 2019, the interest earned by investment on the securities was not sufficient to pay the notified interest by the EPFO for crediting it to the account of the member and therefore the Board of Trustees of the Fund decided in a meeting held on 26.06.2019 to apply for cancellation of exempted.

6. On 03.10.2019, the EPFO gave a panel of 3 qualified Chartered Accountants for auditing the accounts of the exempted fund. Elangovan & Co. a chartered Accountant in Erode has audited and gave report in March 2020 directly to EPFO. The audit report Elangovan and Co was available to the petitioner only in March 2020. The securities market stopped functioning from November 2020 due to covid pandemic on account of which the securities could not be encashed thereby, securities were transferred to the EPFO.

7. On 09.07.2019, the petitioner gave an application for

https://www.mhc.tn.gov.in/judis

WEB COPY

cancellation of the exemption and for transfer of PF Accumulations. on account of covid pandemic processing of application for cancellation of the exemption and the Surrender of the accumulation to the EPFO got delayed. Processing the application for cancellation of exemption could not be commenced before December 2020 as only in the month of December 2020, the EPFO gave the details of Bank account to which the accumulations were to be transferred. Petitioner's company submitted application for cancellation of exemption on 09.07.2019 and the accumulations to the tune of rupees 12 crores were transferred to the accounts of EPF in December 2020 and Rs.29.08 lakhs was transferred in January 2021.

8. In the meanwhile, on 04.11.2020, the Respondent issued a show cause notice asking as to why on 09.08.2019, the petitioner company could not remit the arrears of contributions while mentioning that the petitioner company has failed to furnish the details of remittance prior to 09.08.2019 and that the contributions were remitted only in December 2020/January 2021. On 12.11.2020, the petitioner company gave a suitable reply stating that the details of the bank for transfer of PF accumulations were furnished to the petitioner company on 18.12.2020 and Rs.12,00,68,409/- was transferred in December 2020 and a sum of

WEB COPY

Rs.29,08,131/- was transferred in the month of January 2021. It is also further mentioned in the reply that along with the arrears of contributions, the petitioner company has also transferred a sum of Rs.7,40,324/-by unclaimed amount.

9. On 02.02.2023, the 2nd Respondent issued another show cause notice alleging that there was a delay in payment of arrears of contributions which warranted levy of interest and damages. There was a personal hearing on various dates and finally concluded on 21-Nov-23 while giving reply on 16.02.2023 to the show cause notice for payment of interest and damages, the petitioner company pointed out that the delay in remittance of contribution during the period from 10.07.2019 and 21.12.2020 was on account of circumstances beyond the control of the petitioner company and therefore there was no scope to invoke Sec. 14B and 7Q of the Act.

10. It is submitted by the learned counsel for the petitioner that for the period from July 2019 to December 2020, the contributions paid by the eligible member employees were remitted to the EPFO account through its portal in Salem and the question of invoking either Section 14B or Section 7Q do not arise and hence, sought for quashment of the same. The learned

https://www.mhc.tn.gov.in/judis

WEB COPY

counsel for the petitioner has submitted that the orders passed by the respondent authority are erroneous as the petitioner company has been contributing to the PF directly.

11. The learned counsel for the petitioner company has submitted that the statement of the Bank shows that contributions have been transferred to the account of the respondent and that all the contributions from July 2019 without any delay and however, the same was not considered by the respondent while passing of 7 Q proceedings.

12. The learned counsel for the respondents submits that he has to seek instructions to know whether contributions have been transferred by the petitioner to the respondent from July 2019.

13. According to petitioner company, the entire contribution amount to be paid was already paid to the respondent for which the respondent counsel submits that he requires instructions from the respondent in that regard. The learned counsel for the petitioner company also shows some bank statements and submitted that the entire contribution amount was already transferred to the respondent. Therefore, both the parties are expected to sit across the table, verify the bank statements and

https://www.mhc.tn.gov.in/judis

WEB COPY

come to a conclusion as to whether all the contributions were transferred by the petitioner to the respondent account on time as required under the EPF Act.

14. Considering the above, this writ petition is disposed of by setting aside the impugned orders passed under the 7 Q Act dated 03.01.2024. The respondents are directed to issue fresh notice for enquiry under 7 Q of the Act by giving sufficient time for the petitioner company and the petitioner company is directed to appear before the respondent in response to the said notice, with all the relevant documents on which the respondent shall consider them and pass appropriate orders by following the procedure known to law within a period of three months from the date of receipt of a copy of this order. Connected W.M.P. is closed. No costs.

01.04.2024

vca
1/2

Index	:	Yes/No
Internet	:	Yes/No
Citiation	:	Yes/No

To
The Assistant PF Commissioner

https://www.mhc.tn.gov.in/judis

WEB COPY

Employees Provident Fund Organization
Regional Office
Steel Plant Road,
Dalavaipatti, Salem – 636 302.

DR.D.NAGARJUN,J.
Vca

W.P.No.8481 of 2024

WEB COPY

01.04.2024