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WP.No.10486 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

WP.No.10486 of 2024

and

W.M.P.Nos.11488 and 11490 of 2024

M/s.Sri Ram Travels

...Petitioner

Versus

1.Regional Provident Fune Commissioner _ II,
Employees Provident Fund Organization
Regional Office,
Tambaram,
Rajaji Salai,
Chennai – 600 045.

2.The Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
Tambaram,
Rajaji Salai,
Chennai – 600 045.

...Respondents

Prayer:This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorari to quash the impugned order No.TN/RO/TB/TAM/CC-1/515/62678/7A Proceedings/2023 dated 01.09.2023 passed under Section 7A of the EPF & MP Act, 1952 for Rs.3,94,869/- (Three Lakhs Nienty-Four Thousand Eight-Hundred and



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Sixty Only) for the period from 04/2018 to 09/2018 issued by the 1st respondent.

For Petitioner : Mr.G.Babu Rajendran

For Respondents : Mr.R.Thirunavukkarasu
Standing Counsel

ORDER

In view of the order passed by this Court in WP.No.23679 of 2017 dated 16.08.2023, the petitioner is not entitled for the relief sought for the orders of this Court are extracted hereunder for ready reference:-

“Aggrieved by the impugned order of the 1st respondent/Appellate Tribunal, the petitioner management has filed this Writ Petition.

2. It is the case of the petitioner management that proceedings, were initiated against the petitioner management under Section 14B and 7Q of the Employees Provident Fund and Miscellaneous Provisions Act for damages caused in view of belated contributions and Interest for the period from March 2009 to October 2014, pursuant to which, a final order came to be passed by the 2nd respondent on 16.01.2017 directing the petitioner management to pay a sum of Rs.25,30,767/- towards damages under Section 14 B of the Act and a further sum of Rs.12,19,327/- towards interest under Section 7Q of the Act. Subsequently, vide order dated 15.06.2017, an order of attachment came to be passed by the 3rd respondent for recovery for a sum of Rs.37,50,094/-. Against which, the petitioner preferred an appeal before the 1st Respondent/EPF Appellate Tribunal, which has been rejected by the impugned order dated 18.08.2017 on the ground of delay. As against the said rejection order, the petitioner has come up with this Writ Petition.

3. Learned counsel for the petitioner management would submit that admittedly, there was a delay in remittance of



Contribution under the Act on account of the financial loss incurred by the petitioner management. However, no opportunity was given to the petitioner before deciding the appeal. Hence, the act of the respondent in rejecting the appeal on the ground of delay without providing a fair opportunity to the petitioner is wholly unsustainable. Accordingly, he prayed for allowing this Writ Petition.

4. Learned counsel appearing on behalf of respondents 2 & 3 would submit that the petitioner has to prefer an appeal within the period of limitation of 60 days and a further period of 60 days along with the petition for condoning the delay. However, the petitioner has approached this Court beyond the period of limitation. Hence, the claim of the petitioner for condonation of delay cannot be considered as the appellate authority cannot entertain the appeal beyond the period of limitation of 120 days and this Court cannot accede to the request of the petitioner when the petitioner has not acted diligently.

5. This Court heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents 2 & 3 and perused the materials available on record.

6. It is the admitted case of the petitioner that there was a delay in remittance of contributions under the Act. It is seen from the materials on records that the order of attachment has been passed, the petitioner has approached this Court directly without exhausting the remedy of appeal within the period of limitation or even the extended period. Even as per the statute, the appellate authority has no power to entertain the appeal filed beyond the period of 120 days. If this Court accedes to the relief prayed for by the petitioner, it would not only be stepping into the shoes of the appellate authority but would also be an act beyond the statute. Further, the petitioner has not shown any exceptional circumstance which warrants the invocation of the extraordinary jurisdiction of this Court. When the petitioner has failed to exercise diligence in preferring the appeal on time, this Court cannot grant any concession to the petitioner by invoking its extraordinary



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jurisdiction. Further, no sufficient cause has been shown for the inordinate delay. In such view of the matter, this Court is not inclined to grant relief as sought for by the petitioner. However, the petitioner has to necessarily pay the ESI contributions to the respondents.

7. In view of the above, the petitioner management is directed to pay the ESI contribution to the tune of Rs.50,00,000/- without interest, after deducting the amount which was already deposited, by way of 10 equal instalments, of which the first instalment shall be paid on or before 05.12.2023 and the subsequent instalment shall be paid on the 5th day of every subsequent month. In case of any failure on the part of the petitioner management in remitting the amount as ordered by this Court within the prescribed time limit, the respondent authorities are at liberty to recover the outstanding dues in the manner known to law.

8. This Writ Petition stands disposed of with the above observations and directions. There shall be no order as to the costs. Consequently, the connected miscellaneous Petitions are closed.”

2. Considering the above, the petitioner is at liberty to approach the Tribunal against the orders passed under Section 7 A of the EPF and MP Act, 1952.

3. Accordingly this writ petition stands dismissed. There shall be no order as to costs. Connected WMPs are closed.

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Index :Yes/No



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Speaking : Yes/No

Neutral Citation Case: Yes/No

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