IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

Rev.Aplw No.186 of 2019
against
W.P.No.3186 of 2011

Omega Cables Ltd.,
Rep. By General Manager (Finance)
S.Sundarraman
S/o. N.Subramanian
No.16-17, Industrial Estate,
Ambattur,
Chennai – 600 058. ... Petitioner

Vs.

1. The Recovery Officer
Office of the Recovery Officer,
Employees Provident Fund Organizatio,
Sub-Regional Office- R40 A1, T.N.H.B. Shopping Complex
Mogappair Road
Mogappair (East)
Chennai – 600 037.

2. The Assistant Commissioner of Provident Fund
Employees Provident Fund Organization
Sub-Accounts Office-R40 1, T.N.H.B. Shopping Complex,
Mogappair Road,
Mogappair (East),
Chennai – 600 037.

3. The Presiding Officer,
The Employees Provident Fund Appellate Tribunal,
New Delhi. ... Respondents

Prayer: Review Application filed under Order 47 Rule 1 r/w Section 114 of C.P.C. to review the Order dated 06.03.2019 passed in W.P.No.3186 of 2011 by this Court.

For Petitioner : Mr.R.Srinivas
for Mr.T.Ramkumar

For Respondents : M/s. Sunitha Kumari

ORDER

This Review Application has been filed seeking to review the final order dated Order dated 06.03.2019 passed in W.P.No.3186 of 2011 by this Court.

2. It is the submission of the learned counsel for the petitioner that, petitioner Company was not running properly. Therefore, it has to face closure. Petitioner Company had entered into settlement with 121 employees on 31.12.2002 during settlement made under Section 12(3) of Industrial Disputes Act, 1947. In terms of settlement reach, 121 employees agreed to receive compensation in lieu of their claim of employment. Accordingly, all of them were paid. When the Assessing Officer conducted enquiry, it was informed that, Nil return was filed for the period during May 2002 to January 2023. However, on the ground

that, no documents were produced to show that no workers were working, an Order was passed by 2nd respondent to pay a sum of Rs.15,14,750/- towards Employment Provident Fund Contribution.

2.1. In the appeal filed against the order, petitioner produced the copy of the settlement reached with the employees along with other documents. This has been specifically stated in the grounds of appeal in Ground No.03 to 8. Even in the written argument submitted, the production of copy of settlement and other supporting documents were mentioned. However, the Appellate Authority though referred about the settlement reached and amount paid, proceeded to hold that, even in case of settlement reached and payment was paid, that would amount to wages and petitioner is liable to pay contribution under the Act.

2.2. This order was challenged by way Writ Petition before this Court in W.P. No. 3186 of 2011. This Court on the basis of the submissions made by the learned counsel for the respondent that, petitioner had not produced any material before the Assessing Authority or the Appellate Authority and this arguments were not canvassed before the 2nd & 3rd respondent, proceeded to dismiss the petition on the ground that new ground cannot be taken afresh before this Court. There is an error apparent on the face of the record for the reason that, petitioner produced copy of settlement deed and other connected documents before the Appellate Authority and that was overlooked or omitted to considered by the learned Judge. Therefore, this petition.

3. In reply to this submissions, the learned counsel for the respondent submitted that the Assessing Authority has clearly stated in its order that, petitioner has not produced any evidence in support of the claim that, Company was closed and there were no workers. Even before the Appellate Authority, there is no indication of production of documents in support of the case of the petitioner. Even when the Writ Petition was heared, there was no effort taken by the petitioner to produce the documents in support of its case. This was the reason why this Court had dismissed the Writ Petition stating that, the documents were not produced before the Assessing Authority or before the Appellate Authority. Therefore, she prays dismissal of this petition. She further submitted that, this petition cannot be maintained at this stage.

4. Considered the rival submissions and perused the records. No doubt that the Assessing Authority while discussing about the submissions made by the representatives of the petitioner that the Employer had sent Nil return for the period during May 2002 to January 2023, proceeded to reject the claim on the ground that he did not produce any documents for verification and quantified the contribution. In the Appeal Order, it is specifically mentioned by the Appellate Authority about the settlement reached between the Management and the employees, but proceeded to decide the issue on the question *"Whether the money paid under the settlement amount to wages or not?* Therefore, it not as though the doucments relating to the settlement claimed by the petitioner were not produced before the Appellate Authority.

5. From the narration of the facts and decisions rendered, it is quite possible and probable that the copy of the settlement deed and relevant records were produced before the Appellate Authority for consideration. The copy of the index filed by the petitioner in APA 50(13) 2003 & APA 645 (13) 2003 is produced. It confirms about the production of written arguments, translated version of memorandum of Agreement with

Annexure to Agreement, Specimen Voucher and Form 10. Therefore, it is clearly established that, copy of the settlement deed along with records were produced before the Appellate Authority and the Appellate Authority decided the appeal only on the ground that even if settlment was reached and amount paid, that would amount to wages and thus liable to pay contribution under the Act.

6. The learned counsel for the petitioner submitted that, what is importatant to claim contribution under Section 2(b) of EPF Act, 1952 is that, *the basic wages means all emoluments earned by an employee on duty*. In the case before hand, no employee was working for the reason that, Company was closed. The amount paid was not wages but the compensation in lieu of the claim of employment. Therefore, the claim of contribution for the amount paid as compensation does not arises. For better under stading, Sectio 2(b) of EPF Act is extracted hereunder:

> *(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include –*

(i)the cash value of any food concession;

(ii)any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii)any presents made by the employer;

As per this Section, it is made clear that, basic wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment. Evidence available shows that the amounts paid to the Employees were not wages but compensation in lieu of the claim of employment.

7. Therefore, this Court is of the view that, the claim raised by the 2nd respondent with regard to payment of contribution as confirmed by the 3rd respondent is not in accordance with law. This Court of view that the earlier order passed by this Court in W.P.No.3186 of 2011 has to be reviewed and accordingly reviewed. In view of the reasons stated above,

this Court setsaside the orders passed by the 2nd & 3rd respondents and directs the 3rd respondent to conduct fresh enquiry on the basis of the documents filed by the petitioner and pass appropriate orders in accordance with law, wihtin a period of three months from the date of receipt of copy of the order.

8. With the above observations and directions, the review application is allowed. No costs.

26.03.2024

Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
Sma

To

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G.CHANDRASEKHARAN, J.

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