



W.P.No.17099 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.17099 of 2024
and
W.M.P.No.18478 of 2024

Tamil Nadu Cements Corporation Ltd.,
Rep.by its Managing Director
Kannan
5th Floor, Aavin Illam 3 A,
Pasumpon Muthuramalingam Salai Nandanam,
Chennai – 600 035.

...Petitioner

Vs.

1. The Regional PF Commissioner – II (Exemption),
Chennai – North 37,
Royapettah High Road,
Chennai – 600 014.
2. The Tamil Nadu Cements Corporation Ltd., E.P.P.Trust,
LLA Buildings,
735, Anna Salai,
Madras – 600 002.
3. M/s. IDFC First Bank,
Rep. By the Branch Manager,
RA Puram Branch,
Premise No.57, 1st Floor, O.No.29,
1st Main Road, opposite to Billiroth Hospital,
Raja Annamalai Puram, Chennai – 600 028.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the petitioner on the file of the first respondent to quash the impugned order



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dated 09.08.2023 in RO/CHN-NORTH/TNMAS00002659/Levy of surcharge/2023.

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For petitioner : Mr.M.Velmurugan
For R1 : Mr.P.Vishnu

ORDER

This writ petition has been filed for issuance of writ of certiorari to quash the order dated 09.08.2023 passed by the first respondent in RO/CHN-NORTH/TNMAS00002659/Levy of surcharge/2023.

2. It is submitted by the learned counsel for the petitioner that the petitioner Corporation is Tamil Nadu Cements Corporation Limited caters the need of the Government in Cement production and its products. The company has created Tamil Nadu Cements Corporation Ltd Employees Provident Fund, a trust formed to protect the employees by their schemes to effect savings under various heads. The petitioner company was given exemption under Section 17 (1) (a) and 27 A of the Employees Provident Fund and Miscellaneous Act, 1952.

3. It is further submitted that on 06.10.2017, the first respondent



issued showcase notice to the petitioner to levy surcharge of Rs.2,62,350/- vide EPFO letter No.RO/CHN/C/TN/11332X/Show Cause/2017 for the financial year 2015-2016 alleging certain violations regarding certain investments made by the trust. The petitioner is stated to have appeared before the respondent and made his submissions. However, after a lapse of six years, the first respondent has issued a notice of demand of surcharge dated 09.08.2023 for the financial year 2015-2016 and that the exemption granted under Section 17 of the Act was cancelled on account of deviation in the investment of the surplus amount.

4. It is submitted by the learned counsel for the petitioner that he has made representations dated 08.09.2023 and 20.06.2023, but they were not considered and that after cancellation of the exemption given under Section 17 of the Act, the petitioner has paid entire fund along with 4 crores of surplus. On account of delay in demand by the first respondent since the fund have already been transferred, the petitioner Corporation which is suffering from financial crisis is unable to pay the same and thereby, sought for quashment of the impugned orders.

5. Mr.R.Vishnu, learned counsel who has taken notice for the



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first respondent has submitted that since the petitioner has violated in respect of the investment, exception given to the petitioner was cancelled and that though, notice was given to the petitioner dated 06.10.2007 reply was not given thereby, impugned orders have been passed.

6. Considering the submissions made by both sides, it is clear that the first respondent has issued showcause notice originally on 16.02.2017 and in consequent, after lapse of 6 years notice of demand for surcharge was issue on 09.08.2023. In the meanwhile, the petitioner Corporation has transferred all the funds including the excess amount of four crores to the first respondent on cancellation of exemption given to the petitioner. If this notice of demand was issued immediately after notice dated 16.02.2017, the petitioner Corporation would have paid the surcharge amount out of the excess amount of four crores.

7. Considering the circumstances, since the petitioner Corporation has submitted representations to consider his request in respect of impugned notice, the respondents should have considered and given a suitable reply keeping in view of the fact that the petitioner has not only transferred the entire fund and also have transferred four crores of



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excess amount. However, there was no response from the first respondent.

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8. In view of the above discussion, this writ petition is disposed of at this admission stage itself directing the first respondent to consider the petitioner Corporation representations dated 08.09.2023 and 20.06.2024 expeditiously as possible not later than eight weeks from the date of receipt of a copy of this order, until then the impugned order dated 09.08.2023 in RO/CHN-NORTH/TNMAS00002659/Levy of surcharge/2023 is kept in abeyance. Connected W.M.Ps are closed. No costs.

27.06.2024

vca

Issue order copy today

Index : Yes/No
Internet : Yes/No
Citation : Yes/No

Dr.D.NAGARJUN,J.

vca



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To
1.

The Regional PF Commissioner – II (Exemption),
Chennai – North 37,
Royapettah High Road,
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