



WEB COPY



W.P.No.35286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

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THE HONOURABLE MRS. JUSTICE N.MALA

W.P No.35286 of 2023

W.M.P.No35252 of 2023

Sutherland Global Services Pvt Ltd

...Petitioner

Vs.

1. The Regional provident Fund
Commissioner – II (C&R)
Employees' Provident Fund Organisation
Regional Office – Tambaram
3 Rajaji Salai
Chennai 600 045.

2. Sree Dhanalakshmi Travels
1/151 Anjaneyar Temple Street
Bethel Nagar
Vengaivasal
Chennai 600 073.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 1st respondent in proceedings No.TB/RO/TAM/ENF/CC-II/522/63584/2023 and quash his order dated 16.10.2023.



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For Petitioner : Mr.P.Raghunathan

For Respondents : Mrs.Revathi Manivannan for R1

ORDER

The Writ Petition is filed challenging the order of the first respondent dated 16.10.2023 dismissing petitioner's review application under section 7B-1 of EPF & MP Act, 1952.

2. The petitioner is engaged in the business of process outsourcing with shifts. The vendor of the petitioner is providing transport services to the employees of the petitioner of levels from 1 to 4. The 2nd respondent, the service provider who is covered under the EPF and ESI Act, failed to remit contribution in respect of his employees from March 2013 and therefore show cause notice was issued by the first respondent to the second respondent and to the petitioner.

3. The contention of the petitioner in the 7A proceedings was that the second respondent was covered separately under the EPF and MP Act. Hence



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the liability of the second respondent for default in payment to the first respondent could not be mulcted on the petitioner. The first respondent rejected the contention of the petitioner and passed the order in 7-A proceedings directing the petitioner to pay the contribution to the eligible employees of the second respondent assessed by him at Rs.1,03,65,122/-.

4. Aggrieved by the said order, the petitioner preferred review application which was dismissed vide the impugned order. The petitioner has filed the above writ petition challenging the order passed in Review Application.

5. The learned Counsel for the petitioner submits that the impugned order is a non-speaking order and further submits that the second point on which the review application was dismissed is untenable on the facts of the case. The learned counsel submits that a fair opportunity ought to have been given to the petitioner to contest the review application on merits.

6. The learned counsel for the respondent on the other hand, submits



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that the review application was dismissed on the ground that no new facts were brought out and also inspite of repeated reminders and correspondences, the petitioner had failed to communicate the designation/Auhority of the applicant Mr.Sekar for filing the review application.

7. Heard both the counsels.

8. The learned counsel for the petitioner submits that the second point on which the review application was dismissed was erroneous for the reasons that, not only an e-mail was sent much prior to the impugned order clarifying the authorization of Mr.Sekar to file the review application, but also because it was he who appeared before the 1st respondent in 7A proceedings and the first respondent on satisfying himself of Mr.Sekar's authority to represent the petitioner heard him and passed orders in 7A proceedings. Therefore the 2nd point for rejection was untenable.

9. During the hearing, I directed the counsel to produce the email copy. The learned counsel produced the email copy of the communication regarding



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the Board Resolution (Letter of Authorization) of the first respondent on 21.07.2023 along with Form 5A addressed to the R.O, Tambaram. The said e-mail communication is not disputed by the learned counsel for the respondent.

10. Considering the limited prayer of the petitioner, seeking an opportunity to contest the review application on merits, and considering the fact, that clarification as regards the designation of the applicant was sent through e-mail, much prior to the impugned order, I am of the view that an opportunity should be given to the petitioner to contest the review application on merits.

11. The learned counsel for the respondent submits that review application was also dismissed on the ground that no new facts were stated. A bare reading of the impugned order reveals that by a one liner that no new facts were stated, the review was rejected. In my view when elaborate grounds were raised in support of the review application, the non-consideration of the same by a one liner that no new facts were stated cannot be accepted. It is pertinent to point out here that “reasons” are heart beat of decision.



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12. For the aforesaid discussions, I am of the opinion that the impugned order cannot be sustained. The impugned order is set aside with direction to the 1st respondent to consider the review application afresh after giving reasonable opportunity of hearing to the petitioner and pass orders on merits and in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order. The Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. No Costs.

18.01.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To
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N.MALA,J.

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