IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.8725 of 2025
and
WMP.Nos.9772 & 9773 of 2025

M/s. JR Agency,
Rep. by its Sole Proprietor N.Gnanasoundari,
A4, 11/2, Bheemasena Garden Street,
Mylapore, Chennai – 600 004. ...Petitioner

Vs.

1. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.37, Royapettah High Road, Regional Office,
Chennai (South), Chennai – 600 014.

2. Assistant Provident fund Commissioner,
Employees Provident Fund Organisation,
No.37, Royapettah High Road, Regional Office,
Chennai (South), Chennai – 600 014.

3. The Enforcement Officer,
Employees Provident Fund Organisation,
No.37, Royapettah High Road, Regional Office,
Chennai (South), Chennai – 600 014.

4. The Recovery Officer,
Employees Provident Fund Organisation,
No.37, Royapettah High Road, Regional Office,
Chennai (South), Chennai – 600 014.

5. The Commissioner,
Greater Chennai Corporation,
53, Raja Muthiah Rd, Periamet, Kannappar Thidal,
Poongavanapuram, Chennai, Tamil Nadu – 600 003. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in proceedings dated 02.12.2021 having number TN/RO/CHN-1/TN/1717485/DIV.24/Enf/2021-22 on the file of 2nd respondent and quash the same as erroneous, arbitrary, perverse and consequentially quash the show cause notice dated 26.11.2024 having number TN/CHN-1/TNMAS/1717485/Recovery/DIV 24/Regl/2024 and direct the 2nd respondent to refund the erroneously recovered amount of Rs.1,07,36,492.00.

For Petitioner : Mr.R.P.Vijaya Krishnan

For Respondents : Notice Dispensed with

ORDER

This Writ petition has been filed seeking quashment of the proceedings dated 02.12.2021 having number TN/RO/CHN-1/TN/1717485/ DIV.24/Enf/2021-22 on the file of 2nd respondent and the consequential show cause notice dated 26.11.2024 having number TN/CHN-1/TNMAS/1717485/Recovery/DIV 24/Regl/2024 and to consequently direct the 2nd respondent to refund the erroneously recovered amount of Rs.1,07,36,492.00/-.

2. Since no adverse order is being passed against the respondents, notice to the respondents is dispensed with.

3. It is the case of the petitioner that, it is an agency involved in the business of providing manpower for various organizations and the petitioner duly complied with the work orders and remitted the EPF contributions without any default. While so, due to certain unavoidable circumstances, as there was a delay in payment and as the petitioner failed to pay the contributions in respect of around 160 employees for the period in between

August 2018 to November 2018, the petitioner was issued with a notice under Section 7A of the Employees Provident Fund Act. However, without considering the explanation given by the petitioner, the 2nd respondent has passed the order on 02.12.2021 determining the sum of Rs.3,24,64,401/- payable towards PF, Pension fund and insurance fund contributions and administrative charges due for the period from August 2018 to July 2020. As a consequence of the said order, the subsequent show cause notice was issued directing the petitioner to showcase as to why the petitioner should not be declared as wilful defaulter. Challenging the said orders, the present Writ petition has been filed.

4. Learned Counsel for the petitioner submitted that due to Covid-19 pandemic the business got affected and thereby, there was a delay in remitting the dues, which is due to bonafide reasons and therefore, the petitioner was not at fault and the delay was neither wilful nor wanton. Learned counsel further submitted that, no sufficient opportunity of hearing was afforded to the petitioner to prove its case. Accordingly, he prayed for allowing this Writ petition by setting aside the impugned orders.

5. This Court gave its careful consideration to the arguments advanced by the learned counsel for the petitioner and perused the material documents placed on record.

6. At the outset, this Court expresses its deep displeasure in the manner in which the petitioner has conducted the proceedings before 2nd respondent, After the initiation of 7A enquiry before the 2nd respondent, the matter was taken up on 23.01.2019. From the said date till 19.01.2021, there was no representation for the petitioner. Even after the petitioner entered appearance, they were only seeking time under one pretext or the other. COVID-19 pandemic struck between December 2019 till early 2021. Thereafter, the matter was taken up virtually and even for virtual hearing, the petitioner was not present and even thereafter, the petitioner continued to evade the appearance before the 2nd respondent till the date of passing of the order, ie., till 02.12.2021. The petitioner was given ample opportunities to put forth its case, however, the petitioner neither appeared before the 2nd respondent nor pleaded its case by producing any documents. Thereby, the

2nd respondent had accepted the report filed by Enforcement Officer and accordingly determined the dues payable by the petitioner to the tune of R.3,24,64,401/- towards the Provident Fund, Pension Fund and other funds for the period between August 2018 to July 2020. Further, even in the affidavit filed in support of this Writ petition, no convincing explanation has been given for non remittance of the dues. Hence, this Court is satisfied with the orders passed by the 2nd respondent u/s. 7A and the consequential show cause notice and therefore, no interference is called for in the impugned orders.

7. Further, as against the impugned order issued u/s. 7A of the EPF Act, there is an effective appeal remedy available u/s 7I of the EPF Act, however, without exhausting the said appeal remedy, the petitioner has come up with this Writ petition, which is wholly unsustainable and thereby, this Writ petition deserves to be dismissed.

8. However, liberty is granted to the petitioner to file appropriate appeal before the Appellate Authority under Section 7-I of the Employees

Provident Fund and Miscellaneous Provisions Act, 1952 within a period of four weeks from the date of receipt of a copy of this order. Upon filing of such appeal, the Appellate Authority shall consider the same on merits and in accordance with law and pass appropriate orders within a period of eight weeks thereafter, after affording an opportunity of personal hearing to the petitioner and aggrieved persons, if any. The period during which the case was pending before this Court shall stand excluded for the purpose of computation of limitation, if any.

9. For the reasons aforesaid, this Writ petition stands dismissed with the aforestated liberty. No costs. Consequently, the connected Miscellaneous petitions are closed.

17.03.2025

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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M.DHANDAPANI, J.

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