IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.18953 of 2023
and WMP.No.18200 of 2023

M/s.Shree Pavana Garments
Rep by its Proprietrix Mrs.R.Vimaladevi
No.4/449-A, Eari Medu, Old Shriram Theatre
Cheyur, Avinashi, Tirupur - 641 655. ... Petitioner

Vs.

The Regional Provident Funds Commissioner-II
The Employees' Provident Fund Organization
District Office, 497, I Floor
M/s.Muthusamy & Bros Industrial Complex
Palladam Road, Tirupur - 641 604. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the order dated 10.05.2023 in E.P.F.A.No.37/2023 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai, Tamil Nadu and quash the same and waive the pre-deposit.

For Petitioner : Mr.B.Prashanth Nadaraj

For Respondent : Mr.C.Kulanthaivel

ORDER

The present writ petition is filed for a writ of certiorari to quash the order passed by the Central Government Industrial Tribunal cum Labour Court, Chennai, dated 10.05.2023 in E.P.F.A.No.37/2023, and to waive the pre-deposit.

2. The short facts that led to the filing of the writ petition are set out herein below :

a) The petitioner-company was involved in garments export business and it was registered under the Employees Provident Fund Act. Due to the drop in the petitioner's business, the petitioner's plant was closed on 30.11.2018, and subsequently, it cancelled its rental agreement with the landlord by Lease Cancellation and Termination Agreement dated 03.01.2019.

b) Despite its financial constraints and loss in business, the petitioner-company had paid its EPF contributions without any default till November 2018.

c) On 24.05.2022, the petitioner had informed the respondent about the closure of its unit along with relevant documents.

d) In the meanwhile, the Enforcement Officer of the respondent Department had sent his inspection report dated 14.06.2019 stating that the petitioner-establishment had defaulted in making EPF contributions from October 2018 to April 2019. Based on this report, summons were issued on 19.06.2019 to the petitioner for conducting an enquiry on 08.07.2019.

e) The petitioner's representative was unable to attend the enquiry as he was affected with the COVID virus, followed by a brain stroke. He had later died. Thereafter, the other staff who had been nominated by the petitioner-company was also not able to attend the enquiry on account of certain unavoidable circumstances, and these details were brought to the knowledge of the respondent.

f) On 04.07.2022, the respondent concluded the enquiry and passed the proceedings under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter called 'the Act') in the absence of the petitioner's representative, in and by which, it directed the petitioner to remit a sum of Rs.15,32,666/- within 15 days.

g) Aggrieved by the same, the petitioner preferred a review petition under Section 7 of the Act, which came to be dismissed on the ground of limitation.

h) Challenging the above dismissal, the petitioner preferred a writ petition before this Court in W.P.No.2088 of 2023, which came to be dismissed by an order dated 30.01.2023, on the ground that the order under Section 7A can be challenged by filing an appeal as provided under Section 7B(5) of the Act.

i) The petitioner thereafter preferred an appeal in E.P.F.A.No.37 of 2023 before the Central Government Industrial Tribunal cum Labour Court, Chennai, along with a petition to waive 75% pre-deposit, on a prima facie ground that there are no alleged dues payable by the petitioner and that apart, the claim is made against a closed unit.

j) The Tribunal without considering the submissions of the petitioner, had directed the petitioner to make a pre-deposit of 40%, in its order dated 10.05.2023.

Challenging the said order of the Tribunal, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner would submit that the order of the respondent fixing the liability on a closed unit, is totally illegal and unfair. The petitioner would further contend that right from the establishment of its unit, the petitioner had promptly remitted its EPF contributions without any default. According to the petitioner, they have paid a sum of Rs.37,126/- and Rs.31,458/- respectively for the 61 employees for the period October 2018 and November 2018, and even after the closure of its unit on 30.11.2018, it continued to pay the arrears of EPF dues for the actual employes on 12.12.2022. Now the claim made by the respondent for the period between January 2019 to April 2019, are to the imaginary employees who have not been employed under them. When this proceedings is challenged in an appeal before the Tribunal by the petitioner, the Tribunal ought to have seen whether the claim is *prima facie* valid or not, and should have allowed the petitioner to exercise his right of appeal unconditionally, however, overlooking this aspect, the Tribunal had passed an order of pre-deposit of 40% which is unjust in law.

3. Heard the learned counsel for the petitioner and the learned counsel counsel appearing for the respondent.

4. The Appellate Court had reduced the pre-deposit from 75% to 40% by order dated 10.05.2023, and the said order is under challenge before this Court in the above writ petition. The petitioner-company besides pleading their inability to make the payment, has also stated that they are not liable to make the payment.

5. This Court by an order dated 27.06.2023 had directed the petitioner to deposit 20% of the amount. The same has also been deposited vide Demand Draft bearing No.969403 dated 05.07.2023 for a sum of Rs.3,06,033/-. It is also brought to the notice of this Court that the appeal is yet to be heard. The petitioner has taken a defence that the demand of the respondent itself is incorrect as the petitioner's unit have been closed much before the period of demand. This is the matter that has to be dealt with by the Appellate authority. However taking note of the fact that out of the 40% pre-deposit, 20% has been deposited in the month of July 2023, and since the very authority of the respondent to raise the demand is questioned, the interest of justice would be sub-served if the appellate authority would treat the 20%, already deposited toward the mandatory pre-

deposit and proceed to hear the appeal and dispose of the same within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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P.T. ASHA, J,

ds

W.P.No.18953 of 2023

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