(2021) 12 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Petition No. 7709 Of 2021, Civil Miscellaneous Application No. 24042 Of 2021

BT India Private Limited — APPELLANT

Vs

Union Of India & Ors — RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:
Employees' Provident Fund and Miscellaneous Provisions Act, 1952 — Section 6, 17(2)

Citation : (2021) 12 DEL CK 0026

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition has been filed by the Petitioner- Company, which had established a Private Provident Fund Trust for its employees with the approval of the Commissioner of Income Tax, Delhi. The said Provident Fund Trust was named as BT (Worldwide) Employees Provident Fund and was later renamed as BT India Private Limited Provident Fund. The Petitioner-Company had sought exemption under Section 17(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952(hereinafter, "EPF Act"), read with paragraph 27A of the Employees' Provident Fund Scheme 1952, based on the fact that its employees were in receipt of benefits the nature of a Private Provident Fund, which were no less favourable than the benefits provided under the EPF Act 1952. The Petitioner was already enjoying relaxation when it was located in Gurgaon, and after shifting to New Delhi on 24th January, 2013, it had made representations in respect of the same. The prayers in the writ petition are:

"(a) Issue a Writ of or in the nature of Mandamus commanding the Respondents and the Respondent Nos. 1-3 in particular and each one of them, their men, agents, assigns and subordinates to immediately dispose of the application for grant of exemption under Section 17(2) of the said Act of 1952 read with paragraph 27 A of the EPF Scheme, 1952 in relation to the Employees of the Petitioner's establishment in a time-bound manner and in the interim grant an order of relaxation under paragraph 79 of the EPF Scheme 1952;

(b) Alternatively, issue a Writ of or in the nature of Mandamus, commanding the Respondents to give appropriate directions and issue guidelines to the Petitioner and the Respondents' Board of Trustees for transferring the accumulated fund of the Respondents' Board of Trustees to the Office of Respondent No. 3 being the Regional Provident Fund Commissioner, Dwarka, and to take such other action as may be deemed necessary for the purpose of transferring the fund and/or investment made by the Respondent No. 2's Board of Trustees;

(c) Pass an ad interim order in terms of the prayer above;

(d) Pass any other appropriate writ or writs or order or orders and direction or directions; and/or

(e) Such further and/or other orders be passed, direction and/or directions be given as to this Hon'ble Court may deem fit and proper."

3. Vide the last order dated 18th August 2021, this Court had, after hearing ld. Senior Counsels and Counsels for the parties, observed as under:

"7. The present petition is one which involves Provident Fund benefits for all the Petitioner's employees, qua which, the Petitioner was already enjoying relaxation when it was located in Gurgaon, and after shifting to New Delhi on 24th January, 2013, it had made representations in respect of the same. On the said application made by the Petitioner, the EPFO had recommended the exemption vide its recommendation dated 13th July, 2016 in the following terms:

"11. The System of Monitoring that exists is as under:-.

a) The exempted establishments are required to file a monthly return and another return on a yearly basis in the format prescribed.

b) There is a yearly inspection which also includes audit of the trust being maintained by such establishments which are relaxed under Para 79 of the Scheme or have been granted exemption by the Appropriate Government.

c) The Provident Fund maintained by the Board of Trustees are subject to audit by a qualified independent Chartered Accountant annually. Wherever necessary the EPFO has a right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the Employer.

d) A software for monitoring exempted establishments is in place which facilitates the employers of exempted establishment to feed-in details in respect of the establishments and the Trusts on a monthly basis. This would enable EPFO field offices and also the Head Office to monitor the exempted Establishment.

e) Further, a proforma for third party audit of exempted establishment for effective auditing of such establishments by independent and qualified Chartered Accountants has been finalized by the Sub-Committee on exempted establishments in its meeting held on 28.03.2014.

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It is therefore requested that the proposal may please be considered and exemption to the establishment under Para 27A of EPF Scheme. 1952 may be granted w.e.f. 31.03.2008."

8. The Petitioner was all along under the impression that it was enjoying the exemption, in view of the above extracted recommendation, it is only when the Petitioner recently logged into EPFO's portal that it is stated to have realised that it is shown in the unexempted category. It was then learnt that a specific decision was yet to be taken by the Central Government. Accordingly, the present writ petition was filed.

9. The Fund has also been operated by the Petitioner since 1997 i.e., for more than 23 years. The grant of an exemption to such a trust would have major implications for the employees, inasmuch as there would be a continuous inflow and outflow of employees, transfer of funds between the Petitioner's trust and other trusts or the EPFO, would be affected leading to employees being detrimentally affected. The Petitioner has all along enjoyed either relaxations or an exemption and there are no reasons being given as to why the exemption is not being granted, despite the recommendation of the authority concerned.

10. Further if the Petitioner is not granted an exemption or not considered as an exempted trust, there are possibilities that there would be penalties and coercive steps against the Petitioner."

4. Accordingly, vide the said order, this Court had issued the following directions:

11. Accordingly, since the recommendation for exemption of the Petitioner has already been made by the EPFO, as far back as in 2016, and the matter is now pending for almost five years with the authorities, it is deemed appropriate to direct as under:

1. The Petitioner shall continue to function in the manner as it was functioning before, i.e., as being in the exempted category. The authorities shall ensure that the necessary access to the portal, as an exempted category trust, shall be granted to the Petitioner, within one week.

2. No coercive measures or penalties shall be taken against the Petitioner.

3 The decision on the Petitioner's application for exemption shall be taken on or before 30th September, 2021 and an affidavit m this regard shall be placed

before this court."

5. Today, this Court has been informed by the ld. Senior Counsels and the Counsels appearing for the parties that in terms of the directions given in paragraph 11(3) of the last order extracted above, the Petitioner's application for exemption was considered by the Ministry of Labour & Employment. Vide notification dated 30th November, 2021, the exemption under paragraph 27A of the Employees' Provident Fund Scheme, 1952, read with Section 17(2) of the EPF Act, 1052, has been granted to the Petitioner. The said notification no. S.O. 4901(E) dated 30th November, 2021, which has been published in the Gazette of India, has been placed before this Court. The relevant extract of the Notification reads:

"MINISTRY OF LABOUR AND DEVELOPMENT

NOTIFICATION

New Delhi, the 30th, November, 2021.

S.O. 4901(E). - Whereas, M/s B T (India) Private Limited, [Under Code No. DL/940655, in Regional Office, Delhi (South)] (hereinafter referred to as the said establishment) has applied for exemption under paragraph 27A of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (19 of 1952) (hereinafter referred to as the Act) And whereas, in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of the other provident fund benefits provided under the said Act or under the said scheme in relation to the employees in any other establishment of similar character;

Now, thereafter, in exercise of the powers conferred under paragraph 27A of the said Scheme read with sub-section (2) of section 17 of the said Act, the Central Government after consultation with the Central Board, hereby, exempts the class of employees of the said establishment, i.e. employees on the rolls of establishment who are directly employed for wages, monthly or otherwise, in connection with the work of the establishment and who are directly paid wages/ salaries by the establishment and not including the employees employed on contract basis or through a contract or contractor from the operation of all the provisions of the said Scheme with effect from the 31st March, 2008, and until further orders, subject to the terms and conditions as specified in Appendix 'A' to Paragraph 27AA of the said Scheme and in addition to the following conditions, namely:-

i. In case of takeover of the exempted Trust Fund, estimated net present value of the loss due to differential interest shall be recovered from the establishment;

ii. Compliance of Senior Citizens' Welfare Fund Rules, 2016 in respect of inoperative account by the trust shall be made;

iii. Abiding of arms' length circular by the said establishment by furnishing a certificate from a certified charted accountant;

iv. Aadhaar seeding status shall be updated from time to time by establishment; and

v. The Central Government may lay down further conditions for continuation of exemption of the said establishment and the said establishment shall be bound to comply with such additional conditions as and when the same are communicated."

6. Accordingly, in view of the said notification and the exemption having been granted to the Petitioner by the Ministry of Labour and Employment, the reliefs sought in the present petition stand satisfied. Insofar as the apprehension of the Petitioner in respect of penalty or coercive measures is concerned, ld. Counsel for the EPFO submits that there is no cause for any apprehension in this regard. Accordingly, for the interregnum period when the grant of exemption was pending, no coercive measures shall be taken against the Petitioner.

7. The present petition stands disposed of as satisfied. No further orders are called for.

