(2021) 08 DEL CK 0101

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 : 18-08-2021

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

Citation : (2021) 08 DEL CK 0101

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : N.K.Kaul, Sanjoy Ghose, Jeevan Ballav Panda, Shalini Sati Prasad, Satish Padhi, Meher Tandon, Gaurav Sharma, Aparna Sinha, Amrita Prakash, Siddharth, Amit Kumar Agrawal

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.

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, on the basis of 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.

3. On the last date of hearing, ld. Senior Counsel for the Petitioner had submitted that the Additional Central Provident Fund Commissioner of Delhi

has already recommended exemption for the Petitioner vide recommendation dated 13th July 2016 and the same was recommended with effect from

31st March 2008. However, only recently it was realised that the Petitioner was shown in the unexempted category on the portal of the Employee

Provident Fund Office (hereinafter, â??EPFOâ??).

4. Vide the last order dated 4th August 2021, Mr. Siddharth, ld. Counsel for the EPFO was directed to seek instructions and ascertain as to whether

exemption is to be granted to the Petitioner, and if so, from what date.

5. Further to the last order, Mr. Siddharth, ld. Counsel appearing for the EPFO, submits that he has received instructions that the EPFO has already

recommended the Petitionerâ??s case for grant of exemption, however the Central Government is to take a decision in this regard, and the same

may take at least one month.

6. Ms. Amrita Prakash, ld. Counsel appearing for the Central Government submits that the said decision would take at least one to two months.

7. The present petition is one which involves Provident Fund benefits for all the Petitionerâ??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:

â??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.

xxx

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.â??

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 EPFOâ??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

Petitionerâ??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.

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 Petitionerâ??s application for exemption shall be taken on or before 30th September, 2021 and an affidavit in this regard shall

be placed before this court.

12. Let counter affidavit be filed within six weeks and rejoinder thereto, if any, be filed within four weeks thereafter.

13. List on 1st December, 2021.

