

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.44414 of 2016

M/s A.P.C.Papers and Boards India Pvt.Ltd.,
rep.by is Managing Director
No.9/1 Sreyas, 7th Street, Tatabad
Coimbatore 641 012 .. Petitioner

-vs-

1. The Presiding Officer
Employees Provident Fund
Appellate Tribunal
Bengaluru
2. The Assistant Provident Fund Commissioner
Dr.Balasundaram Road
Coimbatore 641 018
3. The Recovery Officer
Employees Provident Fund Organization
Dr.Balasundaram Road
Coimbatore 641 018 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for records of the first respondent in Appeal No.A/TN-114/2016 order dated 08.12.2016 and the impugned order of the third respondent in Ref.No.TN/RO-CBE/Recovery/CC-14/ 86595/2016 dated 07.11.2016 and quash the same and consequently directing the first respondent to condone the delay and take the appeal for admission on merits within time limit fixed by this Hon'ble Court.

For Petitioner :: Mr.S.Gunalan

ORDER

This writ petition has been filed challenging the correctness of the impugned order passed by the Employees' Provident Fund Appellate Tribunal, Bengaluru in Appeal No.A/TN-114/2016 dated 8.12.2016, rejecting the case of the petitioner

to condone the delay of 450 days in preferring the appeal.

2. Learned counsel for the petitioner submitted that when the petitioner suffered an order under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 in No.TN/RO/86595/ENF/CC-14/2015 dated May 2015 at the hands of the second respondent, an appeal under Section 7(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 can be filed within sixty days from the date of issue of the order. The proviso to Rule 7(2) of the Employees Provident Funds Appellate Tribunal Procedure Rules also further stipulates that if the Tribunal is satisfied that the appellant/petitioner herein was prevented by sufficient cause from preferring the appeal within the prescribed period, it can extend the said period by a further period of sixty days. Therefore, when the Appellate Tribunal has got powers to condone the delay of 60 days after the expiry of sixty days of the period of limitation, in the present case, for the reasons beyond the hands of the petitioner, the delay of 450 days had occurred in filing the appeal. But the Appellate Tribunal, without even considering the sufficient cause shown to condone the delay, has wrongly dismissed the appeal. Therefore, the said order is put to challenge. The learned counsel further submitted that when the petitioner is engaged in the trading of papers by engaging certain employees for short term, the Enforcement Officer had inspected the establishment and taken the records in respect of the short term drivers who have been paid more than Rs.15,000/- and finally assessed the dues payable thereto for the period between March, 2013 and February, 2014 by holding that the contributions have not been made in respect of the exempted employees. Subsequently, when the second respondent issued a notice under Section 7-A of the Act on 25.3.2015 summoning the officers of the petitioner to appear for an enquiry to assess the dues for the period from March, 2013 to December, 2014, although the petitioner appeared before the second respondent on various dates and submitted their explanation along with all the records and registers, the second respondent, without considering the case of the petitioner, passed the order dated Nil.5.15 directing the petitioner to pay the contributions, namely, a sum of Rs.3,55,309/-. Pursuant thereto, the Recovery Officer of the Employees' Provident Fund Organization has also passed an order of attachment of the immovable property of the petitioner on 7.11.2016. Aggrieved by the same, the petitioner filed an appeal before the first respondent-Appellate Tribunal in Appeal No.A/TN-114/2016 with a delay of 450 days. In the application seeking condonation of delay, it has been mentioned that the petitioner was an unorganized sector, therefore, they were not able to get an effective legal assistance about their grievance, as a result they were not able to pursue the matter within the limitation period prescribed under the Act. But the

Appellate Tribunal has wrongly non-suited the petitioner on the ground of delay, he pleaded.

3. This Court is not able to find any justification to condone the delay on the basis of the stand taken by the petitioner. When the appeal under Section 7(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against the order passed by the second respondent should be filed within sixty days from the date of issue of the order, it is not known how the petitioner had delayed the matter. Again when there was a delay of 450 days, no where the petitioner has shown sufficient cause to condone the huge delay. Therefore, this Court is not able to find any error in the impugned order passed by the first respondent-Appellate Tribunal. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.Nos.38262 & 38263 of 2016 are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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2. The Assistant Provident Fund Commissioner
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Coimbatore 641 018
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+1cc to Mr.S. Gunalan, Advocate, S.R.No.78

lrs(CO)
md(30/01/2017)

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