

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10450 of 2018

Thangamman Knit Garments,
Rep.by its Proprietor - Mr.P.Natarajan,
No.469, Kamaraj Road, Palladam Road,
Tirupur, Tamilnadu - 641 604

..Petitioner

vs

1. Employees Provided Fund Organisation,
Represented by its Commissioner,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018

2. The Presiding Officer,
The Central Govt.Industrial Tribunal
Cum Labour Court,
1st Floor, No.26 Haddows Road,
Shastri Bhavan,
Nungambakkam, Chennai - 600 006

..Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of this order No.EPFA (RETURN/MISC./UNNUMBERED)/2018 dated 16.04.2018 issued by the Second Respondent to quash the same and to direct the Second Respondent to permit the appeal filed by the Petitioner with the delay of 585 days to pass such further order or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.T.Thangamani
for M/s.S.Ezhil Raj

For Respondent : Mr.C.Kulanthaivel
standing counsel for EPF

R2-Labour Court

O R D E R

The order dated 16.04.2018, returning the 'Employees Provident Fund Appeal' [hereinafter referred to as 'EPFA'] filed by the writ petitioner, challenging the order passed by the original authority in proceedings dated 01.07.2016 is under challenge in the present writ petition.

2. The writ petitioner is a Company incorporated under the Companies Act, 2013 and is engaging in the manufacture of knitted Garments for exports.

3. The Assistant Provident Fund Commissioner passed an order under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Aggrieved from and out of the said order, the appeal is filed by the writ petitioner.

4. It is contended that the original order was passed by the Assistant Provident Fund Commissioner on 01.07.2016, which was served to the writ petitioner on 19.09.2016. As per the provisions of the Act, an appeal is to be filed before the 2nd respondent within a period of 60 days and Tribunal has got powers to condone the delay of another 60 days and in total, the appeal is to be filed within a period of 120 days for the purpose of numbering the same. However, the writ petitioner filed the appeal after a delay of 586 days and the appeal was filed on 13.04.2018. Thus, the 2nd respondent has returned the appeal by stating that they have no powers to condone the delay under Rule 7(2) of EPF Appellate Tribunal [Procedure Rules] 1997.

5. This Court is of the considered opinion that a liberal approach is required in respect of such cases, where the appeals are filed belatedly. The writ petitioner states that the writ petitioner Company vacated the rented premises and they were facing certain personal issues during the relevant point of time. Thus, they were not in a position to file an appeal within the prescribed time stipulated. Even in such circumstances, Courts have to adopt the pragmatic approach and further the issues are to be decided on merits and in accordance with law. Such returning of the appeal will undoubtedly cause prejudice to the interests of the parties concerned and the right of appeal is rejected for adjudication of the disputed issues.

6. Under these circumstances, the Courts are bound to adopt a liberal approach and accordingly, condone the delay, enabling the parties to adjudicate the issues on merits, so that the grievances can be redressed in an appropriate manner.

7. This being the principles to be followed, this Court is of the considered opinion that the present writ petition

deserves to be considered. However, the writ petitioner has to pay some costs to the respondents on account of the fact that the appeal is filed with a delay of 586 days.

8. This being the factum, the impugned order dated 16.04.2018 passed by the 2nd respondent in order No.EPFA (RETURN/MISC./UNNUMBERED)/2018 is quashed with a condition that the writ petitioner deposits the cost amount of Rs.3,000/- (Rupees Three Thousand only) to the 1st respondent/The Commissioner, The Employees Provident Fund Organization, Bhavishyanidhi Bhavan, Dr.Balasundaram Road, Coimbatore within a period of two (2) weeks from the date of receipt of a copy of this order. If the cost amount is not paid within the time limit prescribed, then the writ petition would stand dismissed automatically.

9. With these observation, the writ petition stands allowed with costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Employees Provided Fund Organisation,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018

2. The Presiding Officer,
The Central Govt.Industrial Tribunal
Cum Labour Court,
1st Floor, No.26 Haddows Road,
Shastri Bhavan,
Nungambakkam, Chennai - 600 006

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.76770

W.P.No.10450 of 2018

SJ(CO)
CS/10/10/2019