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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :15.11.2019
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.34540 of 2012
and
WMP.No.1 of 2012

The Regional Provident Fund Commissioner
Employees Provident Fund Organisation
Regional Office,
No.3, Rajaji Salai, Tambaram,
Chennai-600 045.

..Petitioner

vs

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
7th Floor, 60, Skylark Building,
Nehru Palace, New Delhi-110 019.

2. M/s.Hallmark Industries,
A-30, MEPZ, Kadaperi,
Tambaram,
Chennai-600 045.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent relating to order passed in ATA.No.350(13)2010 dated 19.08.2011 and quash the same.

For Petitioners : Mr.R.Vishnu
for Mr.K.Ramu

For Respondents : R1-Tribunal
Non-appearance for R2.

O R D E R

The order passed by the 1st respondent in ATA.No.350(13)2010 dated 19.08.2011 is under challenge in the present writ petition.

2. The writ petition is filed by the Regional Provident Fund Commissioner challenging the order passed by the Appellate Tribunal.

3. The second respondent/Industries earlier filed writ petition in W.P.No.10788 of 2001, challenging the order passed by the writ petitioner/Regional Provident Fund Assessment dated



15.05.2001. This Court passed an order on 09.09.2001, the relevant paragraphs are extracted as follows:

6. A perusal of the judgment of the Hon'ble Supreme Court cited supra would go to show that the imposition of damage is not automatic. But, it could be done only in the event of mens rea of actus reus on the part of the petitioner to contravene the statutory provision. A perusal of the impugned order would go to show that there has been no finding that the petitioner had any mens rea or actus reus to contravene the statutory provision. In view of the above, I am of the considered opinion that the impugned order is liable to be quashed and the matter needs to be remitted back to the respondent for fresh disposal in accordance with law after affording sufficient opportunity to the petitioner.

7. In the result, the writ petition is allowed, the impugned proceedings of the respondent made in Ref.No.TN/SAO-TBM/SDC/26073/2001, datd 15.05.2001 is set aside and the matter is remitted back to the respondent for passing orders afresh in accordance with law after affording sufficient opportunity to the petitioner. The respondent while passing such final order shall consider the explanation of the petitioner and give a specific finding as to whether the petitioner is liable to pay damages or not.

8. It is brought to the notice of this Court that pursuant to the interim order made by this Court on 08.06.2001, the petitioner has deposited 25% of the amount demanded by the respondent. It is, therefore, directed that the said amount shall be adjusted subject to the outcome of the above proceedings. In any view of the matter, the respondent shall disposed of the matter within a period of three months from the date of receipt of a copy of this Order.

4. The writ petitioner/Regional Provident Fund Commissioner passed an order pursuant to the directions issued by this Court. The said order has been passed without considering the observations made by this Court in W.P.No.10788 of 2001. In other words, this Court passed an order directing the authorities to decide the issues by considering the intention or motivation for committing default in payment of contributions. The authorities again passed an order without following the observations made by this Court. Thus, the Management of Hallmark Industries filed an appeal in ATA.No.350(13)2010 dated 19.08.2011. The Tribunal allowed the appeal and the order of the



authority was set aside. Challenging the said order of the Appellate Authority, the present writ petition is filed by the original authority.

5. The learned counsel for the writ petitioner made a submission that this Court passed an order to decide the issue under Sections 14B and 7Q of the EPF Act, by considering the ground of motivation or intention of the parties in committing default.

6. A perusal of the order shows that the observations of this Court has not been followed by the writ petitioner/authority. Thus, there is no error in respect of the order passed by the Appellate Tribunal. The Appellate Tribunal had rightly considered the grounds raised by the Management Hallmark Industries and set aside the order of the authority. However, the Appellate Tribunal remanded the matter back for the purpose of re-adjudication of issues, as the recovery of damages cannot be waived in this manner. While quashing the order mainly on the ground that the observations of this Court are not followed by the authorities, the Appellate Tribunal has to remand the matter back to re-consider the issues by following the observations issued by this Court. In respect of remanding the matter back, the Appellate Tribunal quashed the order of the authority and allowed the issues, as it would be causing financial loss to the Association. Thus, the writ petitioner is constrained to move the present writ petition.

7. This Court has no hesitation in coming to a conclusion that the Appellate Tribunal, while setting aside the order of the authority and remanding the matter back for re-adjudication with a direction made by the High Court in W.P.No.10788 of 2001, the said order has not been complied with. Thus, the order passed by the first respondent in ATA.No.350(13) 2010 dated 19.08.2011, is quashed. The writ petitioner is directed to issue notice to the second respondent/M/s.HallMark Industries and re-adjudicate the matter with reference to the materials available on record and by following the observations made by the High Court in W.P.No.10788 of 2001 dated 09.09.2001 and by affording an opportunity to the second respondent and thereafter, pass orders by following the procedures as expeditiously as possible.

8. With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

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kk(co)
nr 23/01/2020