

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26867 of 2014

M.P.No.1 of 2014

Delta Shoes Private Limited-Unit II,
SF 765/1B1B, M.C.Road,
Agaramchery Village,
Vellore District.

...Petitioner

vs.

1. Recovery Officer,
Employees Provident Fund Organisation,
S1, TNHB, PHASE-III,
Sathuvachari,
Vellore-632 009,
Tamil Nadu.

2. M/s.New Golden Shoes @ Golden Shoes,
Proprietor R.Manjunath,
S/o.D.Ramadoss Naidu,
26/4C.Gudiyatham Road,
Pallikonda-635809,
Vellore Taluk,
Vellore District.

... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare that the Recovery-Notice of demand dated 16.07.2013 in No.TN/VL/74384/Div-IV/Delta Shoes/2013 and dated -.05.2014 No.TN/VL/74384/Div-IV/Recovery, issued by the 1st respondent is not binding and same is not enforceable as against the petitioner company, and to order any other remedy.

For Petitioner : M/s.S.Thamizharasi

For Respondents : Mr.V.J.Latha
for R1.
Mr.Balan Haridas for R2.

O R D E R

The notice of demand to defaulter prior to attachment of movable and immovable properties issued by the Recovery Officer in proceedings dated May 2014 is under challenge in the present writ petition.

2. The writ petitioner/company states that the company purchased a land & building by way of Sale Deed dated 18.03.2013. Thereafter, obtained Factory License and commenced their operations. The contentions of the writ petitioner are that the impugned order was not addressed to the writ petitioner. The Recovery Officer came to the writ petitioner/Unit on 28.07.2014 in person and handed over the Recovery notice, despite the protest made by the writ petitioner. It is contended that the impugned notice of demand to the writ petitioner/Company, though it is addressed to the second respondent, is arbitrary. It is further contended that the first respondent had misinterpreted the provision of Section 17B of E.P.F.Act, 1952. However, it is brought to the notice of this Court that the writ petitioner/Company has not preferred any appeal challenging the original order passed under Section 17B of EPF Act. This apart, the recovery certificate was issued, and thereafter, the impugned notice of demand to defaulter was issued, which is under challenge.

3. At the outset, the consequential notice is under challenge and the original proceedings issued under the provisions of the Act have not been challenged by way of preferring an appeal before the Appellate Tribunal under the provisions of the Act.

4. The learned counsel appearing on behalf of the writ petitioner made a submission that part amount has already been paid by the writ petitioner/Company. Therefore, the ground that they have not challenged the impugned notice of demand addressed to the second respondent, may not have relevance. However, the authority competent must also ensure that such notices are issued to the correct address by specifying name and address properly. The statement made in this regard by the writ petitioner is found to be right. The impugned notice of demand was issued to M/s.New Golden Shoes, which is the second respondent in the present writ petition. The contention is that the writ petitioner had purchased the second respondent company. However, the authority must ascertain the correct person and initiate action by following the procedure contemplated under the EPF Act. As far as the writ petitioner is concerned, they are at liberty to approach the competent authority by way of filing an appeal under the provisions of the EPF Act. Without exhausting the statutory appeal remedy under the provisions of

the Act, the consequential order cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. This apart, the impugned order is a notice of demand and even against such notice, the writ petitioner is at liberty to file their explanation and objection before the authority, in order to defend their case.

5. Under these circumstances, this Court is not inclined to entertain the present writ petition, as the writ petitioners are bound to exhaust the statutory appeal remedy. Accordingly, liberty is granted to the writ petitioner to approach the competent authority for redressing their grievances. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Recovery Officer,
Employees Provident Fund Organisation,
S1, TNHB, PHASE-III,
Sathuvachari,
Vellore-632 009,
Tamil Nadu.

+1cc to M/s.S.Thamizharasi, Advocate, S.R.No.97846
+1cc to Mr.Balan Haridas, Advocate, S.R.No.98135
+1cc to Mr.V.J.Latha, Advocate, S.R.No.98473

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SS(CO)
CS/09/01/2020

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