



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]No.918 of 2012

and

M.P.[MD]No.2 of 2012

Against W.P(MD)No.6457 of 2008

M/s.Venugopal Fibre Industries,
109/3, Palamuthi Road, Pattukottai,
represented by its Manager,
Venugopal Fibre Industries,
109/3, Palamuthi Road, Pattukottai,
Thanjavur District 614 601.

: Appellant / Petitioner

Vs.

1.The Assistant Provident Fund Commissioner
(COMP), Sub Regional Office,
Employees Provident Fund Organisation,
Sree Complex, Madurai Road, Trichy.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
Thanjavur Division, Thanjavur. : Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 20.09.2011 passed in W.P(MD)No.6457 of 2008.

Prayer in WP(MD). 6457/ 2008 :

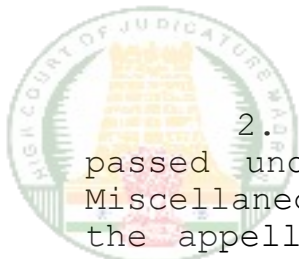
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the impugned order of the first respondent in his proceedings No. D1/TN/TR/11768/SRO-TRY/2008 dated 28/05/2008 and quash the same as illegal.

For Appellant : Mr.S.Muthukrishnan
For R1 : No appearance

JUDGMENT

[Judgment of the Court was delivered by
THE HONOURABLE CHIEF JUSTICE]

Heard learned counsel for the appellant.



2. The appellant filed a writ petition questioning the order passed under Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity '1952 Act'], whereby the appellant had been called upon to discharge its liability of deposit of Provident Fund in terms of the said Act. The stand taken by the appellant is that the appellant even though was an erstwhile manufacturer, yet it had switched over its business to the spinning sector of the industry exclusively and therefore, in view of the exemptions provided for under the 1952 Act, the impugned action taken against the appellant was unsupportable in law.

3. The learned Single Judge dismissed the writ petition on the ground that the appellant had an alternative remedy of filing an appeal in terms of Section 7 (I) of the 1952 Act. Challenging the said judgment dated 20th September, 2011, the present appeal was preferred, which was admitted and interim stay was granted by the Division Bench entertaining the appeal on 8th November, 2012.

4. Learned Counsel for the appellant contends that at this stage, if he is called upon to file an appeal, the same would be hit by limitation prescribed under the Act and therefore, the appeal would not be entertainable.

5. Having been considered the submissions raised, the question as to whether the appellant had actually switched over exclusively as a spinning unit only is a pure question of fact which has been seriously disputed by the respondents stating that the appellant is running a corporate unit of manufacturing and spinning that requires a determination on the basis of evidence adduced in support of such a claim, which in our opinion, would be amenable to an assessment in appeal by the appellate authority and therefore, the learned Single Judge was justified in relegating the appellant to the statutory, alternative and efficacious remedy provided for under the 1952 Act. We, therefore, do not find any legal error in the impugned judgment of the learned Single Judge. But so far as the filing of the appeal is concerned, the appellant contends that he was pursuing a *bona fide* litigation and had been granted an interim order by this Court as indicated above and therefore, the appellant may not be now relegated to the alternative remedy.

6. We have considered the submissions raised and we find that the appellant himself has undertaken this risk of preferring this appeal and therefore, we find at present no legal impediment for the appellant to approach the appellate authority in terms of the judgment of the learned Single Judge in the background of the fact that the appellant had an interim order during the pendency of this appeal.



7. We, therefore, consign this appeal to records without prejudice to the rights of the appellant to prefer an appeal in the manner as provided for in law. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

rj2/akv

To

1.The Assistant Provident Fund Commissioner
(COMP),Sub Regional Office,
Employees Provident Fund Organisation,
Sree Complex, Madurai Road, Trichy.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
Thanjavur Division, Thanjavur.

+1 CC to M/s.S.MUTHUKRISHNAN, Advocate (SR-105786[F] dated
19/12/2019)

+1 CC to M/s.M.PALANIMUTHU, Advocate (SR-105940[F] dated 19/12/2019
)

JUDGMENT MADE IN
W.A.[MD]No.918 of 2012
and
M.P.[MD]No.2 of 2012
18.12.2019

TK/SAR. /03.01.2020/3P/5C