



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1332 of 2020

and

W.M.P. Nos. 1594, 1595 and 3326 of 2020

M/s. Surpass,
Rep. by its Director,
No. 21, Sidco Tekic,
Mudalipalyam,
Trippur - 641 606.

... Petitioner

-vs-

The Assistant Provident Fund Commissioner,
Dr. Balasundaram Road,
Coimbatore - 641 018.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in order bearing Ref. No. TN/R.O/CBE/PDC/CC30/45262/14B PROCEEDING/2014 dated 29.10.2014 and the order passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, Chennai in EPFA No. 109/2018, dated 08.08.2019 and quash the same. (Prayer amended by order dated 06.02.2020 in W.M.P. No. 3324 of 2020)

For Petitioner : Mr. Suresh Babu
for Mr. S. Gunalan

For Respondent : Ms. R. Meenakshi,
Standing Counsel

O R D E R
(through video conference)

Heard Mr. Suresh Babu, Learned Counsel appearing for the Petitioner and Ms. R. Meenakshi, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Respondent by order No. TN/R.O./CBE/PDC/CC30/45262/14B PROCEEDING/2014 dated 29.10.2014 had levied penal damages against the Petitioner under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short). The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. The Appellate Authority by order dated 08.08.2019 in E.P.F.A. No. 109 of 2018 refused to entertain that appeal as barred by limitation. Aggrieved thereby, the Petitioner has assailed the order No. TN/R.O./CBE/PDC/CC30/45262/14B PROCEEDING/2014 dated 29.10.2014 passed by the Respondent and the order dated 08.08.2019 in E.P.F.A. No. 109 of 2018 passed by the Appellate Authority in this Writ Petition.

3. Learned Counsel for the Petitioner contended that the Petitioner had leased the factory to the third party, who had not handed over the copy of the order received from the Respondent in time, which resulted in depriving the Petitioner to get timely legal assistance to pursue the matter. However, the affidavit filed in support of the Writ Petition as well as the typed-set of the Petitioner is conspicuously bereft of requisite details. In response to the query made, Learned Counsel for the Respondent has produced a copy of the impugned order containing an endorsement of receipt made by one R.Vinayakamoorthy on 28.01.2015 through hand delivery. No other material has been produced showing the date on which the copy of the impugned order had been delivered through any acceptable mode at the address furnished by the Petitioner. Be that as it may, in para 8 of the affidavit filed in support of this Writ Petition, it has been stated that the copy of that order was received by the Petitioner on 19.03.2015. Even if it is assumed, without accepting, that it was the date on which the Petitioner had received the copy of the order, the maximum period of limitation of 120 days for filing appeal before the Appellate Authority had ended in July 2015. Learned Counsel for the Respondent has produced a copy of the memorandum of appeal filed by the Petitioner before the Appellate Authority which does not contain the date of its filing, but in column no. 16 therein, it has been type-written that the Demand Draft of Rs.500/- towards appeal fees had been taken on 18.11.2015 meaning thereby that the appeal could have been presented on that date or thereafter falling after the maximum period of limitation prescribed for filing such appeal.



4. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority, which was not appealed against within the maximum period of limitation before the Appellate Authority, or if the Appellate Authority has refused to entertain the appeal preferred after that time limit. As such, when there is no infirmity in the order of the Appellate Authority refusing to entertain the appeal preferred by the Petitioner against the order passed by the Respondent as time barred in accordance with the relevant statutory provisions, it is not permissible to circumvent the legislative intent manifested in that bar created by resorting to invoke the discretionary powers of this Court thereafter.

5. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

vjt

W.P. No. 1332 of 2020

NRL (CO)
CB (14/08/2020)