

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

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

W.P. No. 13371 of 2019

and

W.M.P. Nos. 13483 and 13484 of 2019

M/s Ninety Nine Beedi Factory,
Rep by its Proprietor Mr. K. Azhar,
8, Commissary Bazzar,
Vellore - 632 004.

... Petitioner

-vs-

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.

2. The Recovery Officer,
Sub Regional Office,
Employees Provident Fund Organisation,
Sub-regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the First Respondent in proceedings no. TN/VL/8208/Compl/Enf/DIV-V dated 19.02.2019 passed under Section 7A of the EPF Act and quash the same.

For Petitioner : Mr. K.M.Aasim Shehzad
for M/s. BFS Legal

For Respondents: Mrs. V.J.Latha, Standing Counsel

O R D E R
(through video conference)

Heard Mr. K.M.Aasim Shehzad, Learned Counsel for the Petitioner and Mrs. V.J.Latha, Learned Standing Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order No. TN/VL/8208/Compl/Enf/DIV-V dated 19.02.2019 passed by the First Respondent determining the amount of liability of the Petitioner for contribution towards Provident Fund dues for the period from June 1977 to September 1985 under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short).

3. According to the Learned Counsel for the Petitioner, an Order No. S-35011/ 13(18)/80/PFC/259 dated 01.10.1997 had been passed by the Appellate Authority dismissing exparte the appeal preferred by the Petitioner challenging the notice issued by the Regional Provident Fund Commissioner seeking to enforce the provisions of the Act/Scheme to home beedi rollers engaged by the Petitioner through various intermediaries. This Court by order dated 19.12.200 in W.P. No. 5051 of 1998 filed by the Petitioner had set aside that order and remitted the matter to the Appellate Authority with a direction to hold an enquiry and permit the Petitioner to adduce the oral and documentary evidence and provide a hearing at Chennai and pass appropriate orders in the matter within a period of six months from the date of receipt of that order in the light of the ratio laid down by the Hon'ble Supreme Court of India in P.M. Patel and Sons -vs- Union of India [(1986) 1 SCC 32]. However, the Appellate Tribunal had not listed that appeal for hearing thereafter, and though another Bench of the Appellate Authority has been subsequently established at Chennai, the records from the Appellate Authority at Delhi have not been transmitted to the Appellate Authority at Chennai till now. While the matter stood as narrated supra, the First Respondent, who was under the mistaken impression as if the Petitioner had withdrawn the appeal before the Appellate Authority, has passed the impugned order determining the liability of the Petitioner for the said period under Section 7-A of the Act, which is impeached in this Writ Petition.

4. In response to the aforesaid contention raised by the Petitioner, Learned Counsel for the Respondent has produced a copy of the letter dated 02.08.2004 sent by the Tamil Nadu State Beedi Manufacturers Association informing that they have settled the issue with the Labour Union under Section 12(3) of the Industrial Dispute Act, 1947, before the Joint Commissioner of Labour, Chennai in the proceeding No. D/2954/2004 dated 19.05.2004 and has requested the appeal pending before the Appellate Authority as withdrawn. However, on a cursory perusal of that letter, it is noticed that it has not been signed by the Petitioner, but relates to one A.Habeebur Rahman & Sons (S.Beedi Manufacturers), Gudiyatham, Vellore, who had filed the Writ Petition in W.P. No. 5052 of 1998 that had also been disposed

along with the Writ Petition in W.P. No. 5048 of 1998 filed by the Petitioner by a common order. As such, the First Respondent has committed an error apparent on the face of the record by treating the pending appeal before the Appellate Authority as withdrawn and has proceeded to pass the impugned order, which cannot be sustained. Accordingly, the impugned Order No. TN/VL/8208/Compl/Enf./DIV-V dated 19.02.2019 passed by the First Respondent, is set aside.

5. Be that as it may, it is further informed by the Learned Counsel for the Petitioner that a representation dated 27.08.2020 has been submitted by the Petitioner to the First Respondent requesting to settle the matter on similar terms as agreed in the case of A.Habeebur Rahman & Sons (S.Beedi Manufacturers), Gudiyatham, Vellore and that the Petitioner would be satisfied if the same benefit is extended.

6. In that view of the matter, this Court without expressing any view on the correctness or entitlement on the merits of the claim made by the Petitioner, requires the First Respondent to duly consider the aforesaid representation dated 27.08.2020 made by the Petitioner and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Before carrying out that exercise, if the First Respondent is of the view that the Petitioner would not be entitled for extending the same benefit, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose. In the event of the First Respondent rejecting that representation made by the Petitioner thereafter, it shall be incumbent upon the First Respondent to await for the final decision in the pending appeal before the Appellate Authority before proceeding to pass any other order under Section 7-A of the Act. It is needless to add here that the Petitioner and Respondents shall take immediate steps for transmission from the records from the Registry of the Appellate Authority at Delhi to its Bench established at Chennai.

7. The Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.
2. The Recovery Officer,
Sub Regional Office,
Employees Provident Fund Organisation,
Sub-regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.

Copy to

1. M/s Ninety Nine Beedi Factory,
Rep by its Proprietor Mr. K. Azhar,
8, Commissary Bazaar,
Vellore - 632 004.
2. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Room No. 313, Third Floor,
Shram Shakthi Bhavan,
New Delhi - 110 009.
3. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
1st Floor, B-Wing,
26, Haddows Road,
Shastri Bhawan,
Chennai - 600 006.

W.P. No. 13371 of 2019

NRL (CO)
SP(16/09/2020)

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