

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM

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

W.P. No. 12553 of 2020

and

W.M.P. Nos. 15470 and 15472 of 2020

M/s. Car World,
Rep. by its Proprietor K..Ramesh,
No.5A, Dr. Radhakrishnan Street,
Devi Kurumariamman Nagar,
Pallikaranai, Chennai - 600 100. Petitioner

-vs-

1. Employees' Provident Funds Appellate Tribunal,
Rep. by its Presiding Officer,
I Floor, 'B' Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.
2. The Assistant Provident fund Commissioner - II,
Employees Provident Fund Organisation,
Regional Office - Tambaram,
No.3, Rajaji Salai, Chennai - 600 045. Respondents

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 First Respondent in E.P.F.A. No. 703/2018 dated 21.02.2020 and the Second Respondent bearing No.TB/TAM/RO/ENF 522/63529/2018 and dated 31.05.2018 and quash the same.

For Petitioner : Mr. T.Gowthaman

For Respondents :Mr. K.Ramu, Standing Counsel (for R2)

R1 - Tribunal

O R D E R
(through video conference)

Heard Mr. T.Gowthaman, Learned Counsel for the Petitioner and Mr. K.Ramu, Learned Standing Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by Order No. TB/TAM/RO/ENF/522/63529/2018 dated 31.05.2018 passed under Section 7-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short), confirmed the Order No. TB/TAM/RO/ENF/T-7/63529/2016 dated 17.06.2016 determining the contributions payable by the Petitioner under Section 7-A of the Act. The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days 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. According to the Petitioner, the Order No. TB/TAM/RO/ENF/ 522/63529/2018 dated 31.05.2018 passed by the Second Respondent had not been served by post and that its copy was handed over to the representative of the Petitioner during his visit to the office of the Second Respondent on 08.11.2018. The appeal against that order had been presented on 28.11.2018 by the Petitioner before the Appellate Authority viz., Employees' Provident Fund Appellate Tribunal, Chennai, and that appeal had been taken on its file as EPFA No. 703 of 2018. The Appellate Authority by order dated 21.02.2020 in EPFA No. 703 of 2018 has dismissed that appeal by holding that it has been preferred beyond the maximum period of limitation of 120 days prescribed for the same. Aggrieved thereby, the Petitioner has filed this Writ Petition assailing the order dated 21.02.2020 passed by the Appellate Authority in EPFA No. 703 of 2018.

3. It is apparent on perusal of the impugned order dated 21.02.2020 in EPFA No. 703 of 2018 that the Appellate Authority has proceeded on the assumption that the limitation for filing the appeal against the order in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, has to be computed from the date it bears, and not from the date it is received by the Petitioner as claimed. At this juncture, reference has to be made to the authoritative pronouncement of the Hon'ble Supreme Court of India in Collector of Central Excise, Madras -vs- M/s. M.M. Rubber and Co., Tamil Nadu [(1992) Supp (1) SCC 471] where the date from which

limitation has to be reckoned for the purpose of filing appeal against an order by an aggrieved person, has been explained as follows:-

"12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made : that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any *locus paetentiae*. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmanner, C.J. in *Muthia Chettiar -vs- CIT* [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

....

18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed

with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

It would assume significance from the dictum laid down in that ruling that it is crucial to ascertain the actual date on which an order is served on an aggrieved person, having due regard to the extinguishment of the valuable right to appeal against such decision entailing adverse civil consequences, if it has not been exercised within the maximum period of limitation prescribed for the same. If the Appellate Authority could not accept the contention that the order appealed against had been handed over in person to the representative of the Petitioner only on 08.11.2018 as claimed without any evidence to buttress the same, or if there was a dispute raised by the Respondent regarding the date on which the Petitioner had claimed that the said order had been actually served, it was certainly incumbent upon the Appellate Authority to have called upon the Respondent, who had issued that order, to place materials to show the actual date and the manner in which that order had been delivered to the Petitioner under written acknowledgement for that purpose. In the instant case, it appears that the Appellate Authority had not carried out that exercise till the impugned order dismissing the appeal as time-barred came to be passed.

4. Considering these germane aspects of the matter and in order to shorten litigation, when the matter is taken up for admission today (16.09.2020), this Court has required the Learned Counsel for the Second Respondent to produce the records showing the manner and actual date on which the said Order No. TB/TAM/RO/ENF/522/63529/2018 dated 31.05.2018 was served on the Petitioner. In furtherance thereto, Learned Counsel appearing for the Second Respondent has produced a copy of e-mail dated 16.09.2020 received by him from the Second Respondent, which reads as follows:-

" 7B order dated 31.05.2018 was forwarded to despatch section but the document was not properly sent or any relevant proof furnished by the Despatch section, hence the order copy was handed over to Shri Elayaraja in person on 08.11.2018. The above facts may please be placed before Hon'ble High Court, Madras."

It is well known that Section 27 of the General Clauses Act, 1897, postulates that where a Central Act or Regulations authorized or requires any document to be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. As already pointed out, inasmuch as no material has been shown for having actually handed over the order to the Post Office for delivering it to the Petitioner, the application of that rule of deemed service cannot be invoked in this case.

5. The only possible inference that could be drawn from the incontrovertible fact situation reflected supra is that there is nothing available on record to accept that the Second Respondent had communicated the Order No. TB/TAM/RO/ENF/522/63529/2018 dated 31.05.2018 to the Petitioner by registered post and that physical delivery of that order to the Petitioner through any other mode has not been proved at any time earlier prior to the admitted receipt of its copy on 08.11.2018 by its representative at the office of the Second Respondent. Inasmuch as the appeal had been filed on 28.11.2018, within the prescribed period of limitation of 60 days from that date, it could not have been treated as barred by limitation.

6. The result of the foregoing discussion is that the impugned order dated 21.02.2020 in EPFA No. 703 of 2018 passed by the Appellate Authority cannot be sustained and accordingly, it is set aside. The appeal in EPFA No. 703 of 2018 is restored to file and shall be listed for next hearing before the Appellate Authority on 05.11.2020, on which date the parties shall appear through their respective Counsel to continue the proceedings in that appeal in accordance with law.

7. In fine, the Writ Petition is ordered on the aforesaid terms. Cosequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Maya/vjt

To

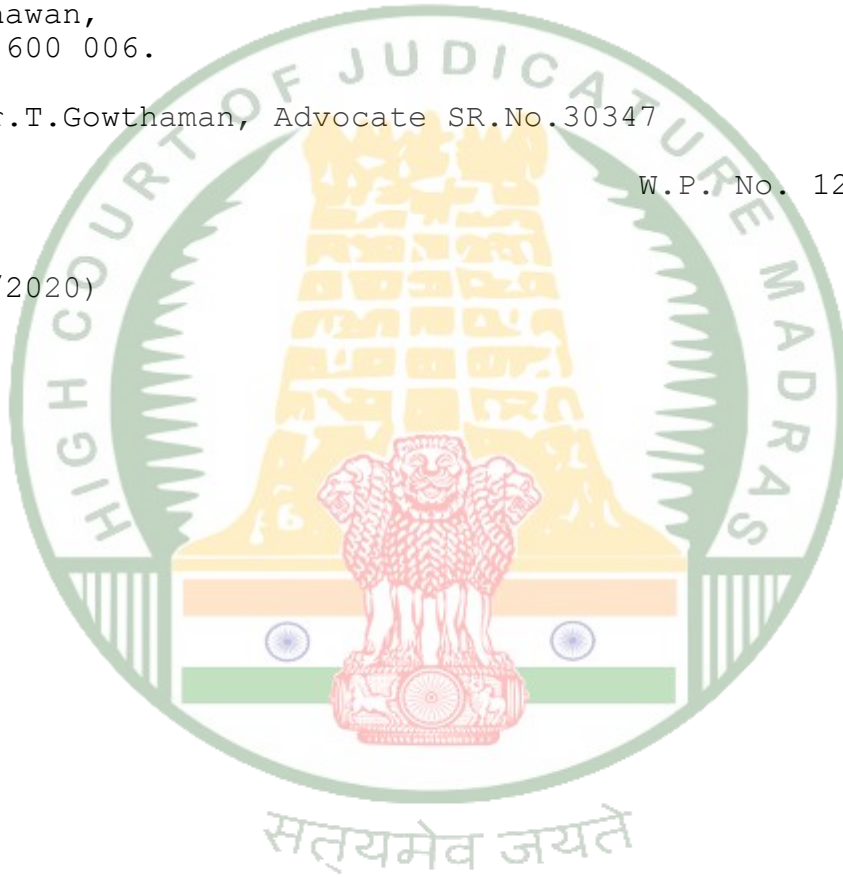
1.The Regional Provident fund Commissioner - II,
Employees Provident Fund Organisation,
Regional Office,
37, Royapettah High Road,
Chennai - 600 014.

2.The Presiding Officer,
Central Government Industrial Tribunal -cum- Labour Court,
1st Floor, B-wing,
26 Haddows Road,
Shastri Bhawan,
Chennai - 600 006.

+lcc to Mr.T.Gowthaman, Advocate SR.No.30347

W.P. No. 12553 of 2020

PP (CO)
GMY (24/09/2020)



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