



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.4359 of 2010

and

M.P. (MD)Nos.1 and 2 of 2010

M/s.Hilltop Oven,
Rep. by its Partner,
J.Jeyathilagar,
7-2-47-A Madurai-Dindigul Road,
Ammaiyanayakanur,
Dindigul District.

... Petitioner

versus

The Assistant Provident Fund
Commissioner (C&R)
Employees Provident Fund Organization,
Regional Office,
Lady Doke College Road,
Chockikulam,
Madurai - 2.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings No.TN/MDU/37640-B/M-1/ENF C/RO/2010 dated 08.03.2010 and quash the same as illegal.

For Petitioner : Mr.B.Saravanan

For Respondent : Mr.A.John Xavier

ORDER

This writ petition has been filed seeking for the issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings No.TN/MDU/37640-B/M-1/ENF C/RO/2010 dated 08.03.2010 and quash the same as illegal.

2. The case of the petitioner is that the petitioner Firm was established by a registered partnership deed dated 21.11.2001. Initially, the petitioner and one Minothi Jeyathilagar were partners of the petitioner Firm. Subsequently, another partner, by name,



Jeyakesh Mithran was admitted into the partnership firm by registered partnership deed dated 03.09.2006. The petitioner Firm is engaged in carrying the business of manufacturing and selling bakery products. Up to 01.02.2009, the petitioner firm engaged only 19 persons in the bakery and thereafter, in order to improve the sales of bakery products, 21 persons were engaged in the bakery from 05.03.2002. Therefore, the petitioner Firm made a request to the respondent to allot separate PF number so as to enable the petitioner Firm to remit PF contribution amount regularly. While so, the respondent sent a letter, vide his communication dated 17.03.2009, informing that a separate code number was allotted to the petitioner unit under Section 2(A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, with effect from 05.02.2002 and the rate of contribution applicable to the petitioner unit was fixed at 12%. It is further stated that the unit will be deemed to be a part and parcel of main establishment namely M/s.Hilltop Towers, Club Road, Kodaikanal. Therefore, the petitioner made its objections by way of a representation dated 04.04.2009. Thereafter, the respondent sent a communication, in his proceedings dated 29.05.2009, requesting to produce certain documents. After receipt of the same, the petitioner submitted a letter dated 08.07.2009 to the respondent explaining that both the concerns are different one. However, without considering the same, the respondent, vide its proceedings dated 08.03.2010, passed impugned order, rejecting the request of the petitioner and directed to comply with the provisions of the Act with effect from 05.02.2002. It is further stated in the impugned order that any belated remittance will attract penal damages and further the petitioner was advised to remit monthly Provident Fund dues through Bank duly mentioning Code No.TN/37640-B. Aggrieved over the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the ownership of the petitioner and M/s.Hilltop Towers is not one and the same and the petitioner Firm is a distinct entity and therefore, the impugned order passed by the respondent, rejecting the request of the petitioner to allot separate code for payment of EPF contribution, is non-est in law.

4. The learned counsel appearing for the respondent submitted that the documents required by the respondent, vide its proceedings dated 29.05.2009, were not produced by the petitioner.

5. Admittedly, the petitioner made a request to the respondent to allot separate code number under EPF Act and Scheme. However, the said request was not considered by the respondent. The respondent, vide his proceedings, dated 29.05.2009, directed the petitioner to produce the following documents.

(i) Copy of Attendance/wages Register from the date of set up of the establishment;

(ii) Copy of Profit and loss account day book and Balance Sheet.



Sheet from the date of set up of the establishment;

(iii) Xerox copy of 1st partnership deed.

6. It is seen that without submitting the above said documents, the petitioner simply submitted a letter to the respondent, explaining that both the concerns are different one, which is not acceptable. Hence, I do not find fault with the respondent in passing the impugned order. Therefore, the impugned order does not warrant any interference. However, the petitioner is permitted to produce the documents as required by the respondent, vide his communication dated 29.05.2009, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent is directed to consider and pass orders, on merits and in accordance with law. If the documents are not produced by the petitioner, within the time stipulated by this Court, the respondent is at liberty to proceed with the matter in accordance with law.

7. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Assistant Provident Fund
Commissioner (C&R)
Employees Provident Fund Organization,
Regional Office,
Lady Doke College Road,
Chockikulam,
Madurai - 2.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-13552[F] dated 25/03/2021)

M.DHANDAPANI, J.

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W.P. (MD)No.4359 of 2010

24.03.2021



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