BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

**W.P.(MD)Nos.3216 and 3217 of 2011**
**and**
**M.P.Nos.1 and 1 of 2011**

**W.P.(MD)No.3216 of 2011**

M/s.A.V.Rm.V.Transport Service Ltd.,
25, Railway Feeder Road,
Sankarankovil - 627 756.
Tirunelveli. ... Petitioner

versus

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal, Camp Hearing at Coimbatore
(Ministry of Labour and Employment,
Government of India) Scope Minar,
Core II 4th Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office, Bhavishya Nidhi Bhavan,
NGO 'B' Colony, Perumalpuram PO
Tirunelveli. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the first respondent in A.T.A.No.69(13)/2010 and quash its order dated 28.01.2011.

**W.P.(MD)No.3217 of 2011**

M/s.A.V.Rm.V.Omnie Bus Service,
25, Railway Feeder Road,
Sankarankovil - 627 756
Tirunelveli. ... Petitioner

versus

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal, Camp Hearing at Coimbatore
(Ministry of Labour and Employment,
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Core II 4th Laxmi Nagar District Centre,
Laxmi Nagar,
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2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office, Bhavishya Nidhi Bhavan,
NGO 'B' Colony, Perumalpuram PO
Tirunelveli. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the first respondent in A.T.A.No.70(13)/2010 and quash its order dated 28.01.2011.

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| For Petitioner in both W.Ps. | : | Mr.Anand Gopalan For Gopalan and Company |
| For Respondents in both W.Ps. | : | Mr.K.Murali Sankar for R-2 |

**COMMON ORDER**

Since the issue involved in both the writ petitions are similar in nature, both the writ petitions are taken up together and disposed of by way of this common order.

2. The petitioner Firm, namely, M/s.A.V.Rm.V.Transport Service Ltd., is an establishment covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as “the Act”). During the inspection of the establishment by the Enforcement Officer of the respondent organisation, it was found that another unit, in the name of M/s.A.V.Rm.V.Omnie Bus Service, was functioning in the said premises and its employees were not enrolled in the Employees' Provident Fund Scheme, 1952. Hence, an enquiry under Section 7A of the Act was initiated to determine the dues in respect of such employees. As the petitioner failed to attend the enquiry, it was decided ex parte and dues for the period from April, 1998 to May, 1999 was determined by proceedings dated 05.08.1999. Aggrieved over the said order, the petitioner filed a petition to set aside the ex parte order in terms under Section 7A(4) of the Act, which was allowed. Thereafter, a fresh enquiry under Section 7A of the Act was initiated and the petitioner was directed to produce all relevant documents to prove their contention. After hearing the petitioner, an order was passed on 04.11.2000, directing the petitioner to pay contribution in respect of the above said period. Challenging the same, the petitioner filed an appeal before the Appellate Tribunal in A.T.A.No.589(13)/2000 under Section 7-I of the Act. The Appellate Tribunal, vide its order dated 19.01.2000, upheld the decision of the authority under Section 7A of the Act and dismissed the appeal. Challenging the order of the Appellate Tribunal, the petitioner filed a writ petition before this Court in W.P.(MD)No.1603 of 2005. This Court, by its order dated 06.07.2010, set aside the order of the Appellate Tribunal and remitted the matter to the second

respondent for fresh consideration. This Court had also issued further direction to the petitioner to deposit Rs.1,00,000/- to the credit of the second respondent within four weeks. In compliance of the said order, the second respondent issued notice to both the parties and after conducting enquiry, the second respondent decided that M/s.A.V.Rm.V.Omnie Bus Service is an extension and constituent unit of the petitioner M/s.A.V.Rm.V.Transport Service and the dues, in respect of the employees engaged by the petitioner establishment for the period 4/98 to 5/99 and in respect of both the units for the period 1995-96 to 1997-98 amounting to Rs.6,87,761/- was determined vide order dated 16.11.2009. Aggrieved by the said order, an appeal in A.T.A.No.69(13)/2010 was filed in respect of M/s.A.V.Rm.V.Transport Service and another appeal in A.T.A.No.70 (13)/2010 was filed in respect of M/s.A.V.Rm.V.Omnie Bus Service before the Appellate Tribunal, which were dismissed, vide order dated 28.01.2011. Challenging the same, both the writ petitions are filed.

3. Mr.Anand Gopalan, learned counsel appearing for the petitioner submitted that the partners in both the entities are one and the same and both the entities are functioning in the same place. However, the registration number of both units, partnership deeds and balance sheet in respect of both units are separate. The learned counsel further submitted that there are 30 employees working in both the entities and they are covered under the Employees' Provident Fund Scheme. In compliance of the earlier order passed by this Court, the entire dues were settled to the respondent and as on date, no due is payable. Hence, he prayed for allowing the writ petitions.

4. The learned counsel appearing for the 2nd respondent submitted that though the petitioner claimed that both the entities obtained two licence and maintained separate balance sheet, the partners of both entities are one and the same and both the establishments are running in the same place. He has also admitted that there are more than 20 employees working in the both the entities and that employees are covered under Employees' Provident Fund Scheme. Hence, this Court may issue a direction to the authority to maintain separate account number in respect of the two entities. It is further submitted that the authority has not initiated any proceedings under Section 14-B of the Act so far. However, the petitioner has to pay interest/damages u/s 7Q of the Act.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the facts in the present case are not in dispute. The second respondent herein, after conducting the enquiry, decided that M/s.A.V.Rm.V.Omnie Bus Service is an extension and constituent unit of M/s.A.V.Rm.V.Transport Service and therefore,

the dues in respect of the employees engaged by the petitioner establishment for the period 4/98 to 5/99 and in respect of both the units for the period 1995-96 to 1997-98 amounting to Rs.6,87,761/- was determined vide order dated 16.11.2009. Though the petitioner claims that the partners in both the entities are one and the same and both the entities are functioning the same place, the employees working in the respective entity are more than 20. Hence, the Appellate Authority has arrived at a correct conclusion that the orders passed by the authorities are confirmed and the same do not require any interference.

7. It is admitted by both sides that both the transport units are functioning in one place and more than 20 employees are working in respective unit. Once the Company/Organization/entity is having more than 20 employees, a separate account has to be maintained by the authority concerned and contribution should be paid separately, as per the provisions of the Act. The Act having contemplated maintenance of separate accounts where the employees in an organisation number above 20, the concerned authority ought to maintain separate accounts in respect of the entities under the two different licences. Therefore, this Court has no hesitation to direct the 2nd respondent to maintain two separate account in respect of two units under the different licences and records thereof be maintained accordingly.

8. Accordingly, the 2nd respondent authority, is directed to maintain two separate account numbers in respect of two licences for the two entities, viz., M/s.A.V.Rm.V.Transport Service Ltd. and M/s.A.V.Rm.V.Omnie Bus Service, provided the employees are more than 20. Further, the petitioner is also directed to pay the EPF contribution regularly in respect of the two separate accounts to the authority.

9. It is submitted by the learned counsel for the petitioner that the petitioner paid the contribution in the year 2011 itself. However, there is no *mens rea* established by the respondents for the delay in payment of contribution and, therefore, the respondents be directed not to initiate any proceedings u/s 14-B of the Act..

10. It is seen that the order under Section 7A of the Act was passed in the year 2009. But, according to the learned counsel appearing for the respondents, the proceedings under Section 14B of the Act has not been initiated till date. However, it is fairly submitted that the reason for the respondents not initiating the proceedings under Section 14B of the Act is not known.

11. In view of the stand of the respondent authority, no proceedings u/s 14-B of the Act having been initiated till date, in view of the long lapse of time and no proceedings u/s 14-B of the Act having been initiated by the respondents, as fairly conceded by the learned counsel for the 2nd respondent, this Court directs that

the 2nd respondent shall not to initiate proceedings under Section 14B of Act for levying damages. However, liberty is granted to the respondents to collect interest in terms of 7Q of the Act.

12. With the above directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal, Camp Hearing at Coimbatore
(Ministry of Labour and Employment,
Government of India) Scope Minar,
Core II 4th Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

copy to

The Section Officer,(2C)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+2 CC to M/s.T.S.GOPALAN & CO, Advocate ( SR-14165[F] dated 29/03/2021 )

+2 CC to M/s.K.MURALISANKAR, Advocate ( SR-14629[F] dated 31/03/2021 )

W.P.(MD)Nos.3216 and 3217 of 2011
29.03.2021

PK(CO)
KB(29.04.2021) 5P 8C