



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.22971 of 2021 and
WMP(MD) Nos.19465 & 19467 of 2021

M/s. Eye Power Weg Service,
Represented by its Partner, P.Robert,
Now at 8/126E, Kamaraj Nagar,
Aralvoimozhy,
Kanyakumari District - 629 301. ..Petitioner

vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
65-A, Water Tank Road,
Nagercoil - 629 001.

2.The Manager,
City Union Bank Ltd,
Now at Athiswamy Arcade,
SLB South Road,
Nagercoil 629 001. ..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent, under Section 8F of the Employees Provident Fund and Miscellaneous Provisions Act in No.TN/NGL/ENF/C.32/75150/8F/2021, dated 04.10.2021 and quash the same and consequently direct the first respondent to forbear from taking recovery proceedings, based on the order of the first respondent, under Section 7A of the EPF & MP Act in No.TN/NGL/ENF/C32/75150/7A Proceedings/2021, dated 29.07.2021, pending orders on admission and stay application in the appeal filed by the petitioner in EPFA 79/2021, before the Employees Provident Fund Appellate Tribunal - The Central Government Industrial Tribunal cum Labour Court, Chennai.

For Petitioner :Mr.M.Azeem

For R1 :Mr.J.S.Murali

For R2 :Mr.Pala.Ramasamy



O R D E R

This writ petition is filed as against the order passed by the first respondent, under Section 8F of the Employees Provident Fund and Miscellaneous Provisions Act and consequential order of the first respondent passed under Section 7A of the EPF & MP Act in No.TN/NGL/ENF/C32/75150/7A Proceedings/2021, dated 29.07.2021.

2.The petitioner is a partnership firm, functioning in the name and style of 'Eye Power Weg Service', located at 8/126E, Kamaraj Nagar, Aravoimozhy, Kanyakumari District, doing wind mill erection, commissioning, operation and spares sales and service. The petitioner firm is subscribed to Employees Provident Fund with Code No.NGL/75150. According to the petitioner, the factory was closed during March 2020, owing to COVID -19 and re-opened only on 01.07.2021. The Enforcement Officer of the first respondent visited the factory of the petitioner on 08.07.2019 and on the basis of the available records, prepared an outstanding report, dated 24.11.2020, determining the contribution payable by the petitioner, for the period from 10/2014 to 03/2020 at Rs.18,49,697/-, which disclosed only consolidated figures, without any details. The petitioner objected the proposal and appeared for the enquiry under Section 7A of the EPF & MP Act and requested for physical hearing to produce records. However, the first respondent passed an exparte order, dated 29.07.2021, under Section 7A(a) (b) of the EPF & MP Act, determining the contribution due for the period from 10/2014 to 03/2020 at Rs.18,49,697/-, based on the report of the Enforcement officer. After deducting the payments already made, the first respondent raised the demand for Rs.16,75,904/-, vide order dated 29.07.2021. Challenging the said order of the first respondent passed under Section 7A of the Employees Provident Fund and Miscellaneous Provision Act, the petitioner has filed an appeal before the EPF Appellate Tribunal, The Central Government Industrial Tribunal cum Labour Court, Chennai, under Section 7-I of the EPF and MP Act, r/w Rule 7 of the EPF Appellate Tribunal Procedure Rules, on 13.09.2021.

3.The learned counsel for the petitioner submits that the said appeal filed by the petitioner on 13.09.2021 has not been numbered and listed for hearing, since the Tribunal is not working properly. Later, the appeal was numbered as E.P.F.A.No.79 of 2021 and listed for hearing before the Tribunal on 07.12.2021. On that date also, unfortunately, the Presiding Officer was on leave and therefore, the Tribunal has posted the matter for further hearing on 21.03.2022. In the meantime, the respondents are taking some coercive steps as against this petitioner by attaching his bank account and therefore this petitioner is before this Court.

4.The learned counsel appearing for the first respondent submits that the petitioner has already filed an appeal before the EPF Appellate Tribunal and pending the appeal, he has also moved this application



simultaneously and hence, this petition is not maintainable. He further submits that the first respondent has initiated action only after the statutory period of appeal is over and they have not taken any steps during the statutory period of appeal.

5.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.Considering the rival submissions made, this Court disposes of the writ petition in the admission stage itself, since this petitioner has filed appeal before the Tribunal, he has to work out his remedy before the Appellate Forum. However, the appeal could not be taken up for hearing on 07.12.2021 for want of the Presiding Officer and posted to 21.03.2022, there shall be an order of interim stay for the orders impugned in this writ petition, till 21.03.2022 and the petitioner shall work out his further remedy of interim order before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Presiding officer,
Employees Provident Fund Appellate Tribunal -
Central Government Industrial Tribunal
cum Labour Court, Chennai.
 - 2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, 65-A, Water Tank Road, Nagercoil - 629 001.
 - 3.The Manager,
City Union Bank Ltd,
Now at Athiswamy Arcade, SLB South Road, Nagercoil 629 001.
- +1 CC to M/s.J.S.MURALI, Advocate (SR-40340[F] dated 23/12/2021)
+1 CC to M/s.M.AZEEM, Advocate (SR-40514[F] dated 28/12/2021)

Order made in
W.P(MD) No.22971 of 2021 and
WMP(MD) Nos.19465 & 19467 of 2021
23.12.2021

VRN

<https://hservices.ecourts.gov.in/cases> MS/457003/2022/3B/6C