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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.03.2022
CORAM

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

W.P. No. 14 of 2017
and
W.M.P. Nos. 7 and 8 of 2017

M/s. A.P.Travels and Tours India (P) Ltd.,
Rep. by its Managing Director,
No. 474, Maniakarampalayam,
Nallamapalayam,
Coimbatore - 641 006.

... Petitioner

-vs-

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Bengaluru.
2. The Assistant Provident Fund Commissioner,
Dr. Balasundaram Road,
Coimbatore - 641 018.
3. The Recovery Officer,
Employees Provident Fund Organization,
Dr. Balasundaram Road,
Coimbatore - 641 018.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in Appeal No. A/TN-113/2016 dated 08.12.2016 and the impugned order of the Third Respondent in Ref. TN/RO-CBE/RECOVERY/CC-14/86118/2016 dated 03.11.2016 and quash the same and consequently directing the First Respondent to condone the delay and take the appeal for admission on merits within the time limit fixed by this Court.

For Petitioner : Mr. B.Gopalakrishnan
for Mr. S.Gunalan

For Respondents: R1 - Tribunal

Mrs. Rita Chandrasekar
for Mrs. R.Meenakshi (for R2 and R3)

O R D E R

Heard Mr. B.Gopalakrishnan, Learned Counsel appearing for
<https://hcservices.ecourts.gov.in/hcservices/> the petitioner and Mrs. Rita Chandrasekar, Learned Counsel



appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by Order No. TN/RO/CBE/86118/ENF/CC-14/ 2016 dated 12.05.2016 had ascertained the contribution towards provident fund dues payable by the Petitioner for the period from August 2013 to December 2015 and from April 2011 to January 2015 under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short). 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, Order No. TN/RO/CBE/86118/ENF/CC-14/2016 dated 12.05.2016 passed by the Second Respondent had not been served by post and that its receipt was acknowledged by one K.Venkatachalam, who is an Advisor of the Petitioner. Thereafter, the Third Respondent by Order No. TN/RO-CBE/ RECOVERY/CC.14/86118/2016 dated 03.11.2016 attached the immovable property of the Petitioner under Section 8-B of the Act. The appeal in Appeal No. A/TN-113/2016 against that order had been presented by the Petitioner before the First Respondent. When the matter came up for hearing on 08.12.2016, the First Respondent was of the view that as there was a delay of 145 days in filing that appeal, it has no power to condone the delay and dismissed the same on the ground of delay. Aggrieved thereby, the Petitioner has filed this Writ Petition assailing the order dated 08.12.2016 in Appeal No. A/TN-113/2016 passed by the First Respondent and for directing the First Respondent to condone the delay and admit the appeal.

3. It is apparent on perusal of the Order No. TN/RO/CBE/ 86118/ENF/CC-14/2016 dated 12.05.2016 passed by the Second Respondent and order dated 08.12.2016 in Appeal No. A/TN-113/2016 passed by the First Respondent 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 in the absence of any evidence produced by the Petitioner to show that it had been received on a later date as claimed. In this context, reference must be made, at once, 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



explicated 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



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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 the 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.

4. It is, no doubt, true that the Petitioner had not proved before the First Respondent that the Order No. TN/RO/CBE/ 86118/ENF/CC-14/2016 dated 12.05.2016 passed by the Second Respondent, which was impugned in the appeal in Appeal No. A/TN-113/2016, had been handed over to him on a particular date in order to compute limitation from that date, but taking into consideration the principles asseverated in the aforesaid binding decision to which no exception can be taken, it was incumbent upon the First Respondent to have called upon the Second 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 in that regard. In the instant case, it appears that the First Respondent had not carried out that exercise till the final order dismissing the appeal as time-barred came to be passed.

5. In that view of the matter, the impugned order dated 08.12.2016 in Appeal No. A/TN-113/2016 passed by the First Respondent is set aside and the matter is remitted back to the First Respondent for fresh consideration so as to ascertain the date on which the copy of the order against which Appeal No. A/ TN-113/2016 had been preferred before the First Respondent was delivered to the Petitioner and depending upon its outcome, determine whether Appeal No. A/ TN-113/2016 has been filed within the maximum period of limitation and proceed further in the matter. The appeal in Appeal No. A/TN-113/2016, which is restored, shall be listed for next hearing before the First Respondent on 29.06.2022 on which date the parties or their respective Counsel shall appear in that regard. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall be informed to all the parties concerned of the date of hearing to which it is adjourned in the prescribed manner. Though obvious, it is made clear that while deciding the matter, the First Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.



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

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt
To

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+1 cc to Mr.R.Manoharan, Advocate Sr.NO.18507

+1 cc to Mr.R.Meenakshi, Advocate Sr.NO. 18499

W.P. No. 14 of 2017

and

W.M.P. Nos. 7 and 8 of 2017

skm(CO)
A.SK(10/06/2022)