BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :- 14.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.3026 of 2012
and
W.M.P(MD).No.4978 of 2022

M/s.VTM Ltd.,
(Formerly Known as
Virudhunagar Textile Mills Ltd.)
Sulakkarai,
Virudhunagar District-626 003.
Rep. by General Manager(Technical) ... Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal
4th Floor, Core 2, Scope Minar,
Laxmi Nagar,
New Delhi-110 092.

2.The Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organization,
Regional Office,
No.2, Lady Doak College Road,

Madurai-625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order dated 10.02.2012 passed by the first respondent in A.T.A. No.418(13)2011 and received on 09.03.2012 and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango
For Respondents : Mr.K.Murali Sankar

O R D E R

This Writ Petition has been filed to quash the impugned order dated 10.02.2012 passed by the first respondent in A.T.A. No.418(13)2011.

2. The petitioner is engaged in the manufacture and sale of cotton fabric and weaving unit situated at Sulakkarai, Virudhunagar District. The second respondent inspected the petitioner unit and has passed the order under Section 7A Act insisting that contribution has to be remitted in respect of the following heads viz.,

1. Escaped Wages - Rs.16,11,657/-
2. wages paid to Daily Collies - Rs.15,45,556/-
3. Stipend paid to apprentices - Rs,2,43,221/-
4. Ex-gratia paid under VRS & Scheme - Rs.28,36,221/-

3. The petitioner has submitted his detailed explanation, after considering the explanation, the respondent had passed an order under Section 7(A) on 23.05.2011. Aggrieved over, the petitioner preferred an appeal before the first respondent under Section 7-I of the Act. At the time of admission of the appeal, the first respondent by an order dated 01.06.2011 granted stay of the impugned order, on condition to deposit 30% of the demand and the same was duly complied with by the petitioner.

4. During the course of hearing, the first respondent without appreciating the factual as well as legal position dismissed the appeal on 10.02.2012. Aggrieved over the same, the present Writ Petition has been filed.

5. While hearing this petition on 26.03.2012, this Court directed the petitioner to pay 50% of the amount in question, less the amount which has already been deposited before the Appellate Tribunal.

6.The contention of the petitioner is that daily coolies are not exclusively engaged by the petitioner and they would work in different establishments, on the basis of availability of work and that the nature of work is only casual and there is no permanent employer and employee relationship between the petitioner and these daily coolies.

7.The first respondent erred in failing to consider the ground raised by the petitioner as to the demand of contribution in respect of compensation paid under Voluntary Retirement Scheme and ex-gratia paid to “scheme workers”. A lumpsum payment is given to the employees as ex-gratia, who left the employment after completing the scheme in which they worked and also compensation has been paid to workmen under the Voluntary Retirement Scheme.

8. As per the VRS scheme, whenever, the employee is leaving the job, some amount will be paid to the employee in lump sum. For example, if any unmarried lady was engaged as an employee, at the time of her marriage, some amount will be paid to the above said person and that amount has been included while calculating the amount under 7(A) which can neither be treated as basic wages nor as dearness allowance.

9. As far as the apprentices employed is concerned, the petitioner establishment is providing training to the apprentices under "Standing Orders" and they are paid stipend. The petitioner has engaged persons who would impart training to the apprentices as per the syllabus prescribed. Hence apprentices should not be considered as regular employees.

10. In the counter affidavit, the learned counsel for the second respondent submitted that the contention of the petitioner that daily coolies are not directly employed is denied as false and misleading. As per the Section 2(f) of the Act, a person working in or in connection with the work of the establishment and earning emoluments for the same is to be treated as the employees of the

establishment. The petitioner did not dispute the squad report before the competent authority as well as before the first respondent Tribunal and the petitioner never said anything about the amount paid under VRS and for scheme employees in respect of the sum of Rs.73.77 Lakhs unearthed as escaped wages for which, PF contributions not paid. Even if it is presumed that a sum of Rs. 73.77 lakhs was in respect of VRS and for scheme employees, since it is entered as basic pay and DA for the year 2008-09 as per the ledger of the petitioner establishment. It is evident that the petitioner has evaded PF contributions towards the above stated basic pay and DA entered for the year 2008-09 defeating the very purpose of the act and scheme protection the poor working class. The respondent further submitted that the appeal has been rightly dismissed by the first respondent Tribunal vide its order dated 10.02.2012, the second respondent proceeded to recover the balance amount of Rs.43,66,119 /-(excluding the 30% of the determined amount has already been paid by the petitioner as a deposit to file appeal) under Section 8F of the Act from the bankers of the petitioner vide 8F order dated 07.03.2012 to deposit the amount with the petitioner's PF Trust in the interest of justice and in the interest of poor working class.

11. After hearing rival submissions and the after perusal of documents, it is seen that the respondents have not perused any of the records submitted by the petitioner establishments. Considering the facts and the circumstance of this case, this Court is inclined to set aside the order dated 10.02.2012 passed by the first respondent in A.T.A.No.418(13)2011 and also the order passed by the EPF organisation. The matter is remitted back to the concerned EPF authority for fresh consideration, the petitioner shall produce the entire records before the concerned authority and concerned authority shall pass appropriate order within a period of three months from the date of receipt of a copy of this order.

In the result, this Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed.

14.09.2022

Index : Yes / No
Internet : Yes
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To

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S.SRIMATHY, J

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