**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 03.11.2022**

**DELIVERED ON : 12.12.2022**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No. 14978 of 2013**
**and**
**M.P.(MD).No.1 of 2013**

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Bhavishyanidi Bhavan,
NGO 'B' Colony, Tirunelveli. ... Petitioner

Vs

1.The Presiding Officer,
Employees' Provident Funds,
Appellate Tribunal,
New Delhi.

2.The General Manager,
M/s.Arumuga Textiles Exporters,
636/15, Rajapalayam Road,
Chatrapatti – 626 102,
Virudhunagar District. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent dated 04.03.2013 in ATA No.723 (13) 2011 and quash the same and direct the second respondent to pay the sum of Rs.12,10,742/- as per the order No.TN/TNY/75375/Enf – I/ Circle 11/11051/2011 dated 09.08.2011.

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| For Petitioner | : | Mr.K.Murali Sankar |
| For R-1 | : | Tribunal |
| For R-2 | : | Mr.C.Karthikeyan |

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**ORDER**

This Writ Petition is filed for Writ of Certiorarified Mandamus to quash the impugned order dated 04.03.2013 and direct the second respondent to pay sum of Rs.12,10,742/- as per the order No.TN/TNY/75375/Enf – I/ Circle 11/11051/2011 dated 09.08.2011.

2. The brief facts as stated in the affidavit are that the second respondent establishment namely M/s.Arumugam Textiles Exporters is covered under Employees Provident Fund Act with Code No.TN/24038. The establishment is having unit at Puyliyangudi. On the request made by the second respondent, the unit at Puliyangudi was allotted a separate code number TN/75375 with effect from 01.07.2008. The Enforcement Officer found that certain employees were not enrolled and not extended the benefit of Provident Fund. The Enforcement Officer had obtained a list of employees from the "Time Office" of the establishment and assessed the dues payable in respect of non-enrolled employees on the basis of the information collected during the inspection. The inspection report Part-II dated 29.04.2011 was issued directing the employer to enroll all the non-enrolled employees and remit the dues for the period from 07/2008 to 03/2011. Since the second respondent failed to enroll the employees and remit the dues, an inquiry under Section 7A was initiated and notice dated 23.05.2011 was issued in order to afford an opportunity to the second respondent to represent his case. In the meanwhile, the second respondent vide its letter dated 16.05.2011 addressed to the Enforcement Officer had contended that it had not employed the persons mentioned in the list annexed with the report dated 29.04.2011. The

Enforcement Officer vide reply dated 23.05.2011 informed the second respondent that the list of employees was obtained from the "Time Office" of the second respondent and the same clearly shows that they were employed by the establishment and directed the second respondent to produce books of accounts in which salary was paid to such employees. Thereafter, enquiry was posted on various dates. The General Manager of the second respondent who appeared for enquiry submitted that there was labour shortage and power shortage. Hence, the shifts duty was reduced from three shifts to two shifts. However, the authority under Section 7A found out that there was steady increase in the production by the establishment, while the number of employees in respect of whom the EPF contribution was remitted had considerably decreased. The second respondent failed to produce the documents supporting their case. Hence, the authority under Section 7A determined the dues of Rs.12,10,742/- for the period from 07/2008 to 03/2011 and directed the second respondent to pay the same. On 29.08.2011, the second respondent requested the petitioner's organization to review the order which was rejected on 29.06.2011 on the ground that the review application was not filed in the prescribed format as required under Section 7B of the Act. Thereafter, the second respondent preferred an appeal before the first respondent.

The first respondent vide order dated 04.03.2013 allowed the appeal mechanically without applying judicial mind. Aggrieved over the same, the present Writ Petition is filed.

3. The second respondent relied on the petition that was filed before the authority as well as before the Tribunal. The first respondent has held that Section 7A of the Act states that it is the Commissioner who would have to make an enquiry. In the present case, the Commissioner has not conducted any enquiry but relied on the Inspector Report. Since the Commissioner has not conducted a fair enquiry without being influenced by the report of the Inspector, the impugned order is not legally sustainable. Moreover, the enquiry officer had noted the discrepancies in maintenance of records by the establishment, but there is no enquiry that the eligible employees have been deprived of the benefit of PF. In the absence of the identification of the employees, the determination of PF dues is a futile exercise as the determined amount will not reach the right persons and based on these reasons, the Tribunal has quashed the impugned order and allowed the appeal filed by the respondent establishment. Aggrieved over the same, the Employees Provident Fund Organization has preferred this Writ Petition.

4. Heard Mr.K.Murali Sankar, learned counsel for the petitioner and Mr.C.Karthikeyan, learned counsel for the second respondent.

5. The main contention of the petitioner's organization is that the first respondent failed to note that the employees were identified by the Enforcement Officer and inspection report part – II dated 29.02.2011. However, the second respondent refuted the allegations of the petitioner by stating that the factory was not running in full-fledged capacity because there was power shortage. Hence, the factory was running in two shifts alone. Moreover, the petitioner's organization has collected a list of names from the watchman and that was relied by the Inspector as well as the petitioner organization. According to the second respondent, the list of names are the names who lives in the entire Village. Whenever any person approaches the second respondent, those persons will be allowed for working in the premises and the watchman will be having the entire list of villages and that will not indicate the actual person who are working in the factory. Moreover, the same person will not come daily. Therefore, it is necessary to identify the exact person and the Tribunal has correctly held that the Commissioner has not conducted any enquiry and the Commissioner has relied

only on the report of the Inspector. The learned counsel appearing for the second respondent further submitted that the second respondent furnished the particulars of power shortage and relied on the order of the first respondent, wherein, it has been stated that opening stock was less in the year 2009 and also the comparative statement of expenditure will also reflect there was continuous reduction in the production. The establishment specific contention is that the establishment has not engaged all the 117 persons during July 2008 and March 2011. The said persons would work based on shifts because there was severe power shortage from the year 2008 to 2011.

6. On considering the rival submissions, this Court is of the considered opinion that there was power shortage from 2008 to 2011, where the factories were allowed to run in a restricted way. Moreover, the factories were also allowed to purchase power from outside. On reading the comparative statement of expenditure in Serial No.9, it has been stated as TNEB and in Serial No.10, it has been indicated as electricity charges. These two would indicate that the establishment has purchased the power from TNEB and has purchased the electricity from outsiders. This was the practice which prevailed during the

power shortage period. Moreover, as rightly held by the Tribunal that the Commissioner has accepted the Inspector's report and has not conducted independent enquiry on his own. The specific contention raised by the second respondent establishment is due to power shortage, all the persons were not employed and the factory was running only two shifts. All these factors would indicate that the PF organization has taken erroneous facts and has come to the conclusion. The second respondent fairly admitted for a subsequent period that is from April 2011, all these factors and difficulties was not there and the business of the establishment has increased and the factory was in a need of more employees and the factory has increased the strength of employees from 2 to 4 and for the increased employees, the second respondent had paid the EPF without fail. Taking all these factors into consideration, this Court is of the considered opinion that the impugned order is legally sustainable. The Commissioner has terribly failed to ascertain the true facts. Moreover, the petitioner's organization has not raised any legally sustainable grounds to interfere with the order of the first respondent.

7. Hence, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

**12.12.2022**

Index : Yes / No
Internet : Yes

Nsr

To

1.The Presiding Officer,
Employees' Provident Funds,
Appellate Tribunal,
New Delhi.

2.The General Manager,
M/s.Arumuga Textiles Exporters,
636/15, Rajapalayam Road,
Chatrapatti – 626 102,
Virudhunagar District.

**S.SRIMATHY, J**

Nsr

Pre-delivery Order made in
W.P.(MD).No. 14978 of 2013

**12.12.2022**