



W.P.(MD).No.8424 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8424 of 2012

and

M.P.(MD).No.1 of 2012

and

W.M.P.(MD).Nos.13043 and 13047 of 2021

M/s.Trimax Umbrella Private Limited,
BVT Mill Compound,
Shencottah,
Tirunelveli – 627 809.
Tamil Nadu,
Represented by its Director,
George A Thayyil

... Petitioner

Vs.

1.The Employees Provident Fund
Appellate Tribunal,
Scope Minar, Laxmi Nagar,
New Delhi – 110 092.

2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Bhavishya Nidhi Bhavan,
NGO 'B' Colony,
Perumalpuram P.O.,
Tirunelveli – 627 007.
Tamil Nadu.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to order of the first respondent in A.T.A.No.54(13) 2012 dated 02.05.2012 and to quash that part of the order directing the Petitioner to deposit 50% of the determined amount as a condition of stay and consequently direct the second respondent to forbear from all coercive or other proceedings for recovery of any disputed demand under order dated 20.12.2011 pending disposal of appeal and to issue such appropriate interim incidental or other orders as may be just and necessary and deemed fit in the facts and circumstances of the case.

For Petitioner : Mr.Joseph Kodianthara,
Senior Advocate,
for Mr.B.Senthil Kumar

For R-1 : Tribunal

For R-2 : Mr.K.Muralishankar

ORDER

This Writ Petition has been filed for Writ of Certiorarified Mandamus to quash the interim order passed by the Appellate Tribunal in A.T.A.No.54(13) 2012 dated 02.05.2012 and to quash the part of the order directing the Petitioner to deposit 50% of the determined amount as a condition of stay and consequently direct the second respondent to forbear from all coercive or other proceedings for recovery of any disputed demand under order dated 20.12.2011 pending disposal of appeal.



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2. The contention of the petitioner is that the petitioner is a Private Limited Company incorporated under the Companies Act, 1956 having its registered office at Kerala. The petitioner owns and manages a factory situated in Tirunelveli which is engaged in the assembly and production of umbrellas. The petitioner undertakes job works for M/s. Johns Umbrella Mart, Alappuzha. The entire raw material required is sent from the said Mart to the petitioner and the petitioner assembles and produces umbrella and send them back to the Mart. Thus, the petitioner receives only job work charges.

3. The Provident Fund authority has initiated proceedings for determining dues under Section 7A(1)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and passed an order dated 20.12.2011. The contention of the petitioner is that the authority has determined the quantum without deciding the issue whether the petitioner's factory is coming under Section 7A(1)(a) of the Act. The above order was passed by the second respondent without following the ratio laid down by the High Court of Madras in the case of Chennimalai Weavers Cooperative Production and Sale Society Limited Vs Government of India reported in (1980) 2 MLJ 339. Therefore, the petitioner has preferred an appeal before the Tribunal. While admitting the appeal, the Tribunal has passed an interim order to remit 50% of the amount. Aggrieved over the said interim order, the present Writ Petition is filed.



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4. The further contention of the petitioner is that as per the section 1(3)(a) of the EPF Act, 1952, the Act applies only to a factory engaged in any industry specified in schedule I and in which 20 or more persons are employed. Section 1(3)(b) is applicable to other classes of establishments which are not factories under section 1(3)(a). As the petitioner is a factory engaged in assembling which is not included under schedule I, the petitioner cannot be treated as an establishment under 1(3)(b). Admittedly the petitioner is a factory and industry engaged in assembling of umbrellas. The Act will not apply to a factory or establishment if any of the conditions stipulated in the Act is not satisfied. The Act can be made applicable to non-factory establishment only by notification by Central Government. As assembling of umbrellas is not notified as a separate class of establishment under the schedule head either under 1(3)(a) or under section 1(3)(b), it cannot be brought under the coverage of the Act. The Learned Counsel for the petitioner relied on the judgment rendered by *Madhya Pradesh High Court in Radhakrishnan Narayandas & another Vs. Regional PF Commissioner & another* reported in 1967 (2) LLJ 649. This judgment was followed by the Madras High Court in *Chennimalai Weavers Cooperative Production and Sale Society Limited Vs Government of India* reported in (1980) 2 MLJ 339. However, the Kerala High Court has differed in *Joseph A. Thayil Vs. the Employees Provident Fund Appellate Tribunal and others in W.A. No.1082 of 2009 dated 29.10.2009*. But against this judgement



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the employer had preferred SLP and the issue is pending before the Hon'ble Supreme Court in S.L.P.No.36161 of 2009 and there is an interim order granted in the said SLP. In such circumstances, when the larger issue of applicability of the Act itself is pending before the Supreme Court, the petitioner contended that the Tribunal cannot insist to pay 50% of the amount while granting interim order.

5. The second respondent had filed a counter stating that the petitioner submitted before the enquiry that the issue is pending before the Supreme Court. But the petitioner was directed to produce the records such as Balance Sheet, Cash Book, Vouchers, Ledgers etc., and granted eight opportunity, but the petitioner had chosen not to avail the opportunity. Hence the case was decided based on the available records. The Appellate Tribunal by exercising its discretionary power has passed the impugned order. However, the respondents submitted that the Tribunal has exercised its power by imposing only 50% of the amount and not imposed 75%, such a discretionary power cannot be interfered. The respondent counsel vehemently opposed the Writ Petition and prayed to dismiss this Writ Petition.



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6. Heard Mr. Joseph Kodianthara, learned Senior Advocate appearing for Mr. B. Senthil Kumar, learned counsel for the petitioner and Mr. K. Muralishankar, learned counsel appearing for the second respondent and perused the records.

7. On perusing the records, it is seen that the Madras High Court has considered the issue by following the Madhya Pradesh High Court which has held in favour of the petitioner. However, the Kerala High Court has differed and the relevant portion is extracted hereunder:

“With great respect, we are not persuaded by the decisions of the Madhya Pradesh High Court in Radhakrishna Narayandas case and that of the Madras High Court in Chennimalai Weavers Co-operative Production and Sale Society Limited”.

8. Hence, the Kerala High Court has proceeded as if Section 1(3)(b) is applicable, even it is covered under Section 1(3)(a). The issue is pending before the Supreme Court for adjudication. Moreover, the Madras High Court, which is a jurisdictional High Court has already held that Section 1(3)(b) is not applicable, if it is covered under Section 1(3)(a). At this stage, the ends of justice demands that the main petition may be heard without insisting on the interim deposit. Therefore, this Court directs the Tribunal to hear the main petition and pass orders without insisting the petitioner to deposit 50% of the amount.



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9. With the above observations, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
Nsr

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S.SRIMATHY, J.

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