BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.20344 of 2021 and
WMP(MD) Nos.16988 & 16989 of 2021

M/s. Vasu Chemicals ... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
No.1, LDC Road,
Chinnachokkikulam,
Madurai -625 002. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the Respondent vide TN/RO/MDU/57097/M6/PDC/LD/2014, dated 28.11.2014 and the order passed by the Presiding Officer of the Appellate Tribunal, CGIT,Chennai, vide EPFA 81/2018 (ATA No.727 (13)/2015) dated 22.01.2020 and quash the same.

For Petitioner :Mr.G.Arunachalam

For Respondent :Mr.John Xavier
Standing Counsel

ORDER

The impugned order passed by the Presiding Officer of the Appellate Tribunal, CGIT,Chennai, vide EPFA 81/2018 (ATA No.727 (13)/2015) dated 22.01.2020, in dismissing the appeal on the ground of limitation is under challenge in this writ petition.

2.The case of petitioner in brief is as follows:-

The petitioner is a small industry manufacturing soap at Avaniapuram, Madurai. According to the learned counsel for the petitioner, the company is prompt in remitting the Statutory contribution dues through an employee exclusively allotted, however he met with an accident and he left the service in the year 2008. Thereafter, the petitioner could not follow it properly and there is some delay in paying the provident fund from February 2008. However, this mistake was noted and the amount was also paid and there is no intention for the delayed remittance of contribution.

2.1.The respondent has issued a notice under Section 14B of the EPF Act, claiming Rs.1,46,024/- as damages for the alleged belated remittance of the contributions. According to the petitioner's counsel, the petitioner was served with the Damage order, dated 28.11.2014, only on 23.06.2015, that too, after submitting the request letter by the petitioner. Challenging the said order of Damage, the petitioner preferred an appeal on 08.07.2015 vide ATA No.727(13) 2015, before the EPF Appellate Tribunal, New Delhi and interim order has also been granted. At this juncture, EPF Southern Tribunal was constituted at Bangalore. In the meantime, the Government of India issued a notification stating that as per Finance Act 2017, the Employees' Provident Fund Appellate Tribunal has been merged with Central Government Industries Tribunal, with effect from 26.05.2017. Based on the notification, the appeal ATA No. 727(13) 2015 filed by the petitioner before the EPFAT, New Delhi has been renumbered as EPFA No.81/2018 by the CGIT, Chennai and the same was communicated to the petitioner on 11.01.2018. The grievance of the petitioner is that the CGIT, without deciding the case on merits, dismissed the EPF Appeal on the sole ground of limitation. The appeal ought to have been filed within 60 days and the Appellate Authority can condone the further period of 60 days, provided that if there is sufficient reason for the delay. The appeal was taken up in the year 2015 and nearly after a period of five years, it was dismissed during 2020, without going into merits. Moreover, without issuing the damage order, recovery notice, dated 08.05.2015 was issued to the petitioner.

2.2.The learned counsel appearing for the petitioner submits that the order is said to have been served on 28.11.2014, but the same has not been served to the petitioner. The petitioner has approached the respondent and obtained the order copy only on 23.06.2015 and from that date, the petitioner is having limitation. However, the respondent considered the date of service of the order to the petitioner as 23.11.2011 and passed the impugned order. But there is no proof for the despatch of the order copy to the petitioner on 28.11.2014 as claimed by the respondent.

3.The learned counsel appearing for the respondent has also fairly conceded that though they have claimed that the order has been sent to the petitioner on 28.11.2014 itself, there is no proof of service of the same in their office file and they have also admitted that the petitioner has approached the respondent and obtained the copy of the order on 23.06.2015. The relevant portion in the counter affidavit is extracted as under:-

> “7.It is submitted that on verification of the records, it is seen that the petitioner has defaulted in the payment of Provident Fund dues for the period from 02/2008, 11/2008, 06/2009, 10/2009, 11/2009, 12/2009, 02/2010, 03/2010 to 09/2012, 11/2012, which attracts penalty in terms of damages under Section 14B of the Act. Hence, an enquiry was initiated under Section 14B and 7Q of the Act and summons were issued vide No.PDC/TN/MDU/Circle6/TN/57097/2014, dated 09.10.2014 to the petitioner's establishment and he was advised to appear before the enquiry authority or personal hearing on 10.11.2014. On 10.11.2014, Sri.Kannan K, Accounts Manager of the petitioner's Establishment appeared and submitted that the interest amount of Rs.73,868/- has already been remitted on 08.11.2014 and he also admitted the delay in remittances as per the demand notice. After providing sufficient opportunity to the petitioner establishment, and having noticed that the petitioner establishment could not present any valid reason for delay in the remittance of dues, keeping in view of the legal

position relating to levy of damages, period of delay, consequential loss to the statutory fund, it has been decided to levy penal damages at the statutory rates prescribed in the three schemes. Ultimately the Assistant P.F Commissioner levied damges under Section 14B of the Act for Rs.1,46,024/- vide proceedings TN/RO/MDU/57097/M6/PDC/LD/2014, dated 28.11.2014. Though 14 B order was sent to the petitioner by post, another order copy was received directly by N.Ponraj, Accounts Clerk on behalf of the petitioner's establishment on 23.06.2015".

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

5.Considering the rival submissions made by either side counsel and taking into consideration of the fact that there is no proof for service of the order served to the petitioner in the year 2014, the impugned order is hereby set aside and the matter is remitted back to the Tribunal for fresh consideration of the appeal on merits and in accordance with law. The Tribunal shall dispose of the appeal, within a period of six months from the date of receipt of a copy of this order.

6.It is reported by the learned counsel appearing for the petitioner that in view of the orders passed by the Tribunal, the petitioner's bank account has been freezed by the respondent. Now the impugned order of the Appellate Authority has been set aside by this order, there shall be an order of interim stay for the attachment of the bank account for a period of eight weeks and it is open to the petitioner to raise his issue before the Appellate Tribunal and get further extension.

7.With the above observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

05.01.2022

Index : Yes/No
Internet : Yes/No
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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

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
No.1, LDC Road,
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Madurai -625 002.

B.PUGALENDHI, J

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