



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.02.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P Nos.2635 & 2644 of 2023

and

WMP Nos.2706 & 2716 of 2023

W.P No.2635 of 2023:

M/s Premier Distilleries (P) Ltd,
Represented by its Managing Director,
K.Sekar

.... petitioner

vs.

1.Assistant Provident Fund Commissioner (Comp),
Employees Provident Fund Organization,
Regional Office,
No.101, 100 Feet Road,
Mudaliarpet P.O.,
Puducherry – 605 004.

2.Recovery Officer
Employees Provident Fund Organization,
Office of the Recovery Officer
Sri Venni Commercial Complex
No.101, 100 Feet Road,
Mudaliarpet P.O.,
Puducherry – 605 004.

.... Respondents



Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the impugned order in proceeding No.TN/PDY/PL/1118/Comp/DIV-I/7A ORDER/2020/138 dated 26.02.2020 passed by the first respondent and consequential impugned order in proceeding No.CHN/RO/PDY/Recy-cell/PC/1118/CP-16/2022-23 dated 17.05.2022 passed by the 2nd respondent and quash the same.

W.P No.2644 of 2023:

M/s Premier Distilleries (P) Ltd,
Represented by its Managing Director,
K.Sekar

.... petitioner

vs.

Assistant Provident Fund Commissioner (Comp),
Employees Provident Fund Organisation,
Regional Office,
No.101, 100 Feet Road,
Mudaliarpeta P.O.,
Puducherry – 605 004.

..Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the impugned order in proceeding No.TN/PDY/PC/1118/Comp/DIV-I/7A ORDER/2019/545 dated 28.06.2019 passed by the respondent and quash the same.

For Petitioner : Mr.N.Murali
in both W.Ps

For Respondents : Mr.P.K.Panneer Selvam,
in both W.Ps Standing Counsel



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COMMON ORDER

The subject matter of challenge in these writ petitions pertains to the order passed by the first respondent under Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as “the Act”) and the consequent recovery proceedings initiated by the recovery officer.

2.The petitioner was carrying on with the business of manufacturing IMFL, by obtaining permission from the Excise Department at Puducherry. The petitioner establishment is covered under the provisions of the Act and the petitioner failed to remit the E.P.F., contributions for the period from 2008-2019. Hence, an inquiry was conducted and a show cause notice was issued and ultimately, an order came to be passed by the first respondent under Section 7(A) of the Act. Insofar as W.P.No.2635 of 2023 is concerned, the petitioner was directed to pay a sum of Rs.9,15,855/- within 15 days, failing which, the same will attract penal damages and interest. Insofar as W.P.No.2644 of 2023 is concerned, the petitioner was directed to pay a sum of Rs.35,23,208/-.

3.The grievance of the petitioner is that they have become a sick industry



and already proceedings were initiated by the Excise Commissioner, Puducherry and through proceedings dated 01.10.2020, the license that was given to the petitioner was cancelled and the premises was locked and sealed. Hence, according to the petitioner, they are completely out of business and the premises has also been locked and sealed and left with no other alternative, the present writ petitions have been filed before this Court.

4.Heard Mr.N.Murali, learned counsel for the petitioner and Mr.P.K.Panneer Selvam, learned Standing Counsel for the respondents.

5. In the considered view of this Court, these writ petitions have been filed and this Court has been asked to consider the same like a mercy petition. The order passed by the first respondent under Section 7(A) of the Act, is an appealable order and the said appeal has to be filed within the time period prescribed under the Act. The law is now well settled where the appeal is filed beyond the limitation period, the authority does not have the power to condone the delay. In the present case, the order has been passed in the year 2019-2020 respectively and admittedly no appeal was filed. Since the petitioner had an efficacious and alternative remedy to challenge the order passed by the first respondent,



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this Court cannot entertain a writ petition and examine the order passed under Order 7A of the Act. By entertaining such a writ petition, a statutory bar that has been imposed under the Act, cannot be overlooked by this Court. Hence, there is absolutely no justification for this Court to entertain these writ petitions and go into the legality of the order passed by the first respondent under Section 7(A) of the Act.

6. When this Court expressed its mind to the learned counsel for the petitioner, the learned counsel submitted that the petitioner is facing financial constraints and hence, the petitioner will pay the dues determined by the respondent in installments. If the petitioner wants to resolve the dispute with the first respondent and to revive the industry, this Court will not stand in the way. Hence, it is left open to the petitioner to make a representation before the first respondent in this regard by specifically undertaking to pay the amount and the time period within which it will be paid. It is left open to the first respondent to consider the representation and to give some opportunity to the petitioner to pay the contribution amount dues in installments. Except giving this liberty, no further orders can be passed in these writ petitions.



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7. In the result, these writ petitions are disposed of. No Costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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To

1. Assistant Provident Fund Commissioner (Comp),
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N. ANAND VENKATESH, J.

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