



WEB COPY



WA No.980 of 2023 and W.P.No.24761 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WA No.980 of 2023

and

W.P.No.24761 of 2019

WA No.980 of 2023

M/s.Sivamani Spinning Mills Ltd.,
Represented by its Managing Director,
Mr.V.Ramanathan,
Bysuhalli Village,
Dharmapuri-635 205.

: Appellant

versus

The Recovery Officer,
Employees Provident Fund Organisation,
Ministry of Labour and Employment,
Regional Office,
S.J.Plaza,
Swarnapuri, Saleem -636004.

:Respondent

PRAYER: Writ Appeal filed against the order of the learned Single Judge
in WP No.12946 of 2019 dated 25.11.2022.

For the Appellant : Mr.P.Thangaraju

For the Respondent : Mr.P.K.Pannerselvan



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The Assistant Provident Fund Commissioner,
Regional Office-Salem,
Employees Provident Fund Organization,
S.J.Plaza, Swarnapuri,
Salem-636 004.

... Petitioner

versus

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

2.M/s.Sivamani Spinning Mills,
Bysuhalli Village,
Dharmapuri-635 205.

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari to call for the records relating to the order passed by the first respondent dated 16.10.2014 on ATA No.201(13)2013 and quash the order passed therein.

For the Petitioner

:Mr.P.K.Panneer Selvan

For Respondents

:first respondent-Presiding Officer

Mr.P.Thangaraja
for second respondent



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JUDGMENT

(Made by *M.S.RAMESH. J.*)

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When the EPF authorities had initiated recovery proceedings under 8B-8G of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Tribunal had ordered the same in terms of a Central Government notification dated 09.04.1997 granting certain reduction of the contributions in view of the pendency of proceedings before the BIFR. The challenge made to the order of the Tribunal by the industrial establishment before the learned Single Judge was rejected pursuant to which the present intra court appeal has been filed.

2. The learned Standing Counsel for the EPF, inter alia, raised grounds touching upon the jurisdiction and authority of the Tribunal to entertain an appeal against the recovery proceedings. This apart, he also questioned the authority of the Tribunal in having granted an exemption as per the notification dated 09.04.1997 retrospectively from March 1991.



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3. The learned counsel for the establishment however contend that though the Tribunal had extended the benefits of the notification from March 1991, they claim its benefits only from September 1997 onwards.

4. The notification issued by the Ministry of Labour, Government of India dated 09.04.1997, inter alia, has extended the benefits of Section 6 to a Sick Industrial Company also, from the commencement of declaration as a Sick Industry by the BIFR, till the date on which the company becomes positive in terms of the orders passed under Section 17(2) of the Sick Industrial Companies Act.

5. The aforesaid notification would necessarily be construed to have only prospective effect. If that be so, the Tribunal was not correct in extending the benefit of the notification to the appellant establishment retrospectively from March 1991 onwards. It is further brought to our notice that the net worth of the establishment had become positive in terms of orders passed under 17(2) of the Sick Act and therefore, the benefits of the notification requires to be terminated with that date.



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6. The learned Counsel for the EPF had raised two grounds touching upon the jurisdiction, as well as the authority of the Tribunal in dealing with an appeal preferred under the recovery proceedings.

7. In our view, these issues ought to have been raised by the EPF authorities before the Tribunal itself. However, since we have also found an error in the order of the Tribunal in applying the notification dated 09.04.1997 retrospectively and also having found that the counsel for the EPF should have raised the preliminary objections before the Tribunal, we are of the view that the matter can be re-agitated before the Tribunal after giving opportunity to both the sides.

8. It is now brought to our notice that the powers of the EPF appellate Tribunal has now been conferred on the Central Government Industrial Tribunal (CGIT).

9. In the light of the above observations, the order of the learned Single Judge in W.P.No.12946 of 2019 as well as the order of the EPF



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Appellate Tribunal dated 16.10.2014 in ATA No.201(13) 2013 are set aside and the matter is remitted back to the Central Government Industrial Tribunal (CGIT), Haddows Road, Chennai for fresh consideration.

10. The EPF authorities are at liberty to raise the preliminary objections before the CGIT touching upon the authority and jurisdiction. The CGIT, shall also extend due opportunity to the Establishment and shall pass final orders as expeditiously as possible. Till a final decision is taken by the CGIT, the EPF authorities shall not take any coercive steps against the establishment.

11. Writ appeal and writ petition stand disposed of accordingly. There shall be no order as to costs. Consequently, C.M.P.No.9770 of 2023 and W.M.P.Nos.24401 and 24404 are closed.

[M.S.R., J.] [C.K., J.]
01.10.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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