



W.P(MD)No.4634 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4634 of 2017 and
WMP(MD) Nos.10859 and 3718 of 2017

M/s.Mahesh Value Products (P) Ltd.,
Madurai Mandapam Road,
Othaveedu,
Manalur,
Sivagangai District – 630 611.
Rep by its Manager (H.R).,
Sri.O.V.M.Sivakumar

... Petitioner

Vs

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, No.2,
Lady Doak College Road, Chokkikulam,
Madurai - 625 002.

2.The Branch Manager,
Corporation Bank,
West Masi Street,
Madurai - 625 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for



W.P(MD)No.4634 of 2017

the records in pursuant to the impugned order passed by the 1st respondent in No.M8/RO/MD/MDU/42585/ENFC/8F/2017 dated 09.03.2017 and quash the same.

For Petitioner : Mr.S.Karthik,
For Respondents : No appearance

ORDER

This writ petition is filed as against the order passed by the EPF authority/the first respondent herein, under Section 8F of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, initiating recovery proceedings, pursuant to the determination of EPF contribution made under Section 7A of the Act.

2.The petitioner company, namely, Mahesh Value Products (P) Ltd., is engaged in manufacturing of Rubber play balls, Tennis balls and food products like Asafetida and other masala products. The Company comes under the purview of Employees' Provident Fund Organization. A show cause notice was issued by the Assistant Provident Fund Commissioner, Madurai/the first



W.P(MD)No.4634 of 2017

WEB COPY

respondent herein to remit EPF contribution on conveyance, City Compensatory Allowance and Medical allowance from July 2016 onwards, for which, the petitioner has replied on 14.09.2016, explaining that the petitioner Company is remitting Provident Fund Contribution for the wage components and not on other allowances such as conveyance allowance, city compensatory allowance and medical allowance, as these allowances would not fall under the definition of "basic wages". A request has also been made by the petitioner to defer the first respondent's demand in respect of other allowances as the issue has been seized of by the Honourable Apex Court. However, the first respondent, without considering the same has passed an order in TN/MDU/42585/Enf.C/18043/Circle18/2017, dated 09.02.2017, assessing the arrears for contribution for the period from April 2016 to June 2016, levying contribution amount of Rs.13,51,937/-. Challenging the above order, the petitioner has filed an appeal before the Employee's Provident Fund Appellate Tribunal, Bengaluru on 28.02.2017 and the same is pending. At this juncture, the first respondent has passed an attachment order in



W.P(MD)No.4634 of 2017

M8/RO/MD/MDU/42585/ENF'C/8F/2017, dated 09.03.2017.

WEB COPY

Aggrieved over the same, the petitioner has filed this writ petition in the year 2017.

3.The learned counsel appearing for the petitioner submits that the first respondent ought to have deferred the enquiry under Section 7(A) of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952, till the outcome of the issue seized of by the Honourable Apex Court in respect of contribution on allowances. He further submits that Section 7(I) of the Act, mandates appeal time for 60 days from the date of receipt of a copy of this order and the petitioner has preferred an appeal in ATA No.57 of 2017, before the Appellate Tribunal at Bangalore on 24.02.2017, well within the time limit. The Appeal is now pending in EPA No. 357 of 2018 before the Appellate Tribunal, Chennai and the next hearing date is 21.10.2024. However, without considering the same, the first respondent has passed an order of attachment in a hurried manner.



W.P(MD)No.4634 of 2017

WEB COPY

4.This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials placed on record. There is no representation for the respondents.

5.The EPF authority has determined the liability of this petitioner under Section 7(A) of the Act on 09.02.2017 and as against the same, the petitioner has preferred a statutory appeal, under Section 7(I) of the Act, before the Tribunal on 24.02.2017, i.e within the time limit as mandated under Section 7(I) of the Act. It appears that the appeal is now pending in EPA No.357 of 2018 before the Appellate Tribunal, Chennai and it is posted for disposal on 21.10.2024. The time limit for preferring an appeal is 60 days and the Appellate Tribunal can also excuse for another 60 days, if it is satisfied. However, recovery proceedings under Section 8F of Act has been initiated on 09.03.2017, within a period of 30 days.



W.P(MD)No.4634 of 2017

WEB COPY

6.In view of the above, this writ petition is allowed and the impugned order passed by the first respondent in No. M8/ RO/ MD/MDU/42585/ENFC/8F/2017 dated 09.03.2017 is set aside. The first respondent is permitted to proceed further on the outcome of the appeal preferred by this petitioner in EPA No.357 of 2018 before the Employee's Provident Fund Appellate Tribunal, Chennai. The Appellate Tribunal shall dispose of the above appeal within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous petitions are closed.

25.10.2024

NCC :Yes/No
Index :Yes
vrn



W.P(MD)No.4634 of 2017

To
WEB COPY

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, No.2,
Lady Doak College Road, Chokkikulam,
Madurai - 625 002.

2.The Branch Manager,
Corporation Bank,
West Masi Street,
Madurai - 625 001.

Copy to

The Employee's Provident Fund Appellate Tribunal, Chennai.



WEB COPY



W.P(MD)No.4634 of 2017

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.4634 of 2017 and
WMP(MD) Nos.10859 and 3718 of 2017

25.10.2024