

(2017) 01 MAD CK 0188

In the Madras High Court

Case No : W.P.(MD)No. 378 of 2010 and M.P.(MD) Nos. 1 of 2010 and 1 of 2012

AR.A.S. Auto Private Limited

APPELLANT

Vs

The Regional Provident Fund Commissioner, Madurai

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
Section 7Q

Citation : (2017) 2 CLR 209

Hon'ble Judges : Mr. R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. P. Chandra Bose, Advocate, for the Petitioner; Mr. Murali Shankar, Advocate, for the Respondents

Final Decision : Disposed off

Judgement

R. Suresh Kumar, J.—The prayer in the writ petition is for a Writ of Certiorari, calling for the records from the file of the 3rd respondent herein in his notice of demand in TN/MDU/808/RECY/RO of 09 dated 15.12.2009, received by the petitioner on 22.12.2009 and to quash the same.

2. The petitioner is a private limited company and was engaging in the business of distribution of spare parts and Dealers for Ambassador cars and Lancer cars etc. In July, 2005, the petitioner Company was closed and previous to that number of employees were working in the company and for them periodical contribution has been made by the petitioner company. However, in spite of the said contribution having been made by the company, the first respondent had issued two orders under Section 14B of the EPF Act, one is dated 27.04.2007 and another one is dated 30.09.2009 for recovery of interest for the belated payment of the dues. As against the said two orders, the petitioner company had filed appeals before the appellate authority i.e., Employees Provident Fund Appellate Tribunal in ATA Nos. 638(13) of 2007 and 8(13) of 2009 respectively. The said

two appeals are pending before the Appellate Tribunal. Though Appeal No. 638(13) of 2017 was dismissed for default at one point of time, subsequently on petition being filed by the petitioner, the said appeal got restored. In so far as the other appeal in ATA No.8(13) of 2009 is concerned, the same was also dismissed for default. However, the petition for restoration of the appeal was filed and the same is pending consideration before the Appellate Tribunal. Therefore, both the cases of the petitioner are pending before the Appellate Tribunal. When that being so, the third respondent issued the impugned order of recovery notice dated 15.12.2009, whereby the third respondent has sought to recover from the petitioner under two heads, one is for Rs.4,68,668/- and another is for Rs.36,819/-. In the same impugned order the first respondent has also issued recovery notice for further sum under the other heads, one is for Rs.1,52,717/- and another is for Rs.16,415/-. In fact the petitioner has remitted the said two sums i.e. Rs.1,52,717/- and Rs.16,415/- under 7Q proceedings. However, in respect of the other two amounts under 14B proceedings i.e., Rs.4,68,668/- and Rs.36,819/-, the said Appeals are filed before the Appellate Tribunal and the same is pending. When the appeals are pending before the Tribunal, this recovery notice was issued by the first respondent and once the amount is paid as per recovery notice, then it is fait accompli, if it succeeds in the appeals pending before the Tribunal. Therefore, the petitioner has come out with this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would contend that admittedly the petitioner's appeals filed before the Appellate Tribunal against the said orders seeking recovery from the petitioner under Section 14B of EPF Act are pending. When the appeals are pending before the Appellate Tribunal, recovery cannot be made. In this regard, the learned counsel appearing for the petitioner relied upon two decisions of this Court:

(i) In W.P.No. 456 of 2004 in the matter of M/s. Venthamarai Match Works v. The Assistant Provident Fund Commissioner and another dated 08.11.2005.

(ii) In W.P.No. 1891 of 2006 in the matter of Somasundaram Super Spinning Mills v. The Regional Provident Fund Commissioner and another dated 07.03.2006.

In these two decisions and in many number of decisions of this Court, this Court had taken consistent view that when the appeal proceeding is pending before the Appellate Tribunal no coercive steps shall be taken by the authority concerned to recover the amount. Therefore, the impugned recovery proceedings under 14B of the EPF Act, in view of the filing of the appeals, is totally unjustifiable and therefore, the impugned order is liable to be quashed.

4. Per contra, the learned Standing Counsel appearing for the respondents would state that though the petitioner has preferred two appeals, which are pending before the Appellate Tribunal, there is no stay for recovering the same from the petitioner. Since the said sum had been admittedly paid belatedly, the respondents have every right to recover the said sum under 14B proceedings.

Therefore, the recovery notice issued by the third respondent, which is impugned herein, is fully justifiable and it is in consonance with the provisions of the Act and therefore, no interference is required. Moreover, the learned counsel for the respondents also would contend that both the appeals were originally dismissed for default, of course, subsequently on the petition filed by the petitioner, one appeal is restored, but still ATA No.8(13) of 2009 is not yet restored and therefore the same cannot be treated as appeal pending before the Appellate Tribunal. Therefore, there is no justification on the part of the petitioner, seeking for the interference in the impugned recovery notice.

5. This Court has considered the said submissions made by the learned counsel for the respective parties and considered the materials placed before it for perusal.

6. It is an admitted fact that against the orders passed by the first respondent under Section 14-B of the Act, Appeals were filed by the petitioner in ATA No. 638(13) of 2007 and 8(13) of 2009. Though both the appeals were dismissed for default, on filing petition for restoration, Appeal No. 638(13) of 2007 was restored. In respect of Appeal No. 8(13) of 2009 is concerned petition for restoration of the appeal was filed and the same is pending consideration before the appellate Tribunal. When admittedly appeals are pending before appellate Tribunal as against the interest claimed, the same cannot be sought to be recovered from the petitioner by way of impugned recovery notice. Certainly there is no justification on the part of the third respondent to insist upon the petitioner to pay the same immediately. Once the said amount which is sought to be recovered from the petitioner based on the impugned order is paid and ultimately if the appeals are allowed in favour of the petitioner, then it is a case of fait accompli. In this regard the said judgments referred by the learned counsel for the petitioner can be usefully referred to.

7. In W.P.No. 456 of 2004 (cited supra), this Court has taken the following view:

"5. Law is well settled that when a person is entitled to seek a remedy by filing a statutory appeal, such remedy must be efficacious and effective. Admittedly, an appeal remedy is available to the petitioner before the Employees Provident Fund Appellate Tribunal. Pending appeal, if such coercive steps are allowed, it would amount to deprivation of the statutory right conferred on a person to vindicate the grievance before the forum. Courts have consistently viewed that pending appeal no coercive steps shall be taken.

6. In that view of the matter, it would be only proper for this Court to dispose of this writ petition with a direction to the Tribunal to consider and dispose of the appeal filed by the petitioner on 19.04.2004 as expeditiously as possible. It would be also appropriate that in the meantime and till the disposal of the appeal as directed, the first respondent shall not indulge in coercive steps and for that reason the impugned order shall be kept in abeyance."

Like that in W.P.No. 1891 of 2006 (cited supra), the following order has been

passed:

"5. It is also the case of the petitioner that the appeal is still pending and yet to be disposed of. That being so, the conduct of the second respondent in proceeding to attach the property will amount to coercive process thwarting the appeal which is pending before the Tribunal.

6. Law is well settled that when the statutory appeal is pending before the Employees Provident Fund Appellate Tribunal, New Delhi and the appeal in being an effective and efficacious remedy, in all fairness such a coercive action taken by the second respondent by the impugned proceedings deprives the statutory right conferred on the petitioner.

7. Hence, it would be proper that this writ petition is disposed of with a direction to the Tribunal to consider and dispose of the appeal filed by the petitioner.

Accordingly, I am inclined to direct the Employees Provident Fund Appellate Tribunal, New Delhi to consider and dispose of the appeal filed by the petitioner dated 15.12.2005 as expeditiously as possible."

8. In view of the said pronouncements made by this Court taking very consistent view, this Court is of the considered view that when appeals are pending before the appellate Tribunal no coercive steps shall be taken to recover the amount as against which only appeals were filed.

9. In the result, the following order is passed:

(i) The impugned order passed by the 3rd respondent dated 15.12.2009, shall be kept in abeyance and the same shall not be given effect till the final decision is made by the appellate Tribunal in the appeals filed by the petitioner in ATA Nos. 638(13) of 2007 and 8(13) of 2009.

(ii) Once the appeals are decided, it is needless to mention that the parties are bound by the said decision and thereafter they can act according to the decision to be taken by the Appellate Tribunal.

(iii) The petitioner shall be at liberty to approach the Appellate Tribunal to make any application, if he is advised to do so, for the early disposal of the appeals.

10. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.