
(1962) 04 MAD CK 0011
In the Madras High Court
Case No : Writ No. 54 of 1960

Evershine Metals and Another APPELLANT
Vs
Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 03-04-1962

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 2(1A)

Citation : AIR 1963 Mad 455 : (1962) 2 LLJ 479

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : K.K. Venugopal, for the Appellant; R.G. Rajan, for Addl . Govt. Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

Veeraswami, J.—This petition is to quash an order of the respondent, the Regional Provident Fund Commissioner, Madras, dated 12th

September 1957, regarding the concern of the petitioner as a scheduled industry and calling upon it to remit the employer's share of contribution,

full and double administrative charges at the prescribed percentage for the period from 1st November 1952 to 31st March 1955 besides penal

damages at 6 1/2 per cent. per annum on the delayed remittance for the period. The petitioner is said to be a proprietary concern upto 31st March

1959 when it was converted into a partnership firm. The business which was started in 1948 consists of the manufacture of builder's hardware,

parts and accessories in the nature of gate handles, door handles, coat hooks, soap trays, tooth paste trays etc. The petitioner admits that in 1952

and subsequently more than 50 workers have been employed and that with effect from the 1st April 1956 it had introduced the provident fund

scheme for its workmen. According to the petitioner, the provident fund inspector, Madurai, and the respondent called for particulars and

eventually decided that its concern is a scheduled industry and this opinion was concurred in by the Government of India u/s 19A, Employee's

Provident Funds Act, 1932. When the petitioner specifically asked of the respondent how he regarded the concern to be a scheduled industry, the

respondent by his communication dated 15th February 1958 answered,

Your factory comes under the purview of the Employees Provident Funds Act, 1952 and the scheme framed thereunder from 1st November

1952 and it is engaged in the manufacture of building and sanitary fittings which come under the category of mechanical products, (vide item 20 of

Schedule I of the Employees Provident Funds Act 1952).

2. The petitioner asks this Court under Article 226 of the Constitution to quash the impugned order on two grounds: (1) that the petitioner's

concern is not a scheduled industry and (2) that in any case, retrospective application of the provisions of the Act and the scheme framed

thereunder and demand for the period from 1st November 1952 to 31st March 1956 are not warranted by the provisions of the Act and of the

scheme framed thereunder. So far as the second point is concerned, it has to be answered in favour of the petitioner in view of the decision of this

Court in W. P. No. 619 of 1959 (Mad) that such retrospective application of the provisions of the Act and of the scheme framed thereunder and

demand for an earlier period, such as in the present case, could not be supported. That part of the order of the respondent demanding

contribution, administrative charges, penal damages in respect thereof for the period already mentioned should be quashed.

3. The first point involves consideration of the relative statutory provisions. Section 1(3) of the Act as it stood at the relevant time makes its

provisions applicable subject, of course, to those contained in Section 16 of every establishment which is a factory engaged in any industry"

specified in schedule I in which 50 or more persons are employed and to any other establishment employing 50 or more persons or class of such

establishments which the Central Government may by notification in the official gazette specify in this behalf. Power is given u/s 4 to the Central

Government to add to Schedule I any other industry for the purpose of applying

the Provident fund scheme. Section 6 relates to contributions and matters provided for in schemes. Schedule I takes in any industry engaged in the manufacture among other things of electrical, mechanical or general engineering products. An explanation follows :

In this schedule without prejudice to the ordinary meaning of the expressions used therein the expression "electrical, mechanical or general engineering products

would include certain items listed. There are as many as 25 items in the list. Item 20 in the list is ""wires, pipes, tubes, and fittings."" As already

indicated, in the view of the respondent, the concern of the petitioner is a scheduled industry, because it is engaged in the manufacture of building

and sanitary fittings"" which comes under the category of mechanical products, it is this view of the respondent which the petitioner attacks and

contends to be unsound and not warranted by the language of Schedule I to the Act.

4. Sri K.K. Venugopal urges for the petitioner that the implications of the explanation is that the items mentioned in the list which follows it, are not

intended to fall otherwise within the ambit of the expression ""electrical, mechanical or general engineering products"". He says that is the effect of the

inclusive enumeration in explaining the expression and adds that ""product"" for the purpose of the explanation and in the main provisions in the

schedule is one that should by itself be a piece of electrical or mechanical machinery or fitting of an accessory thereto or used in connection with it

in general engineering and it does not mean any product for the manufacture of which electrical or mechanical or general engineering process is

employed. In support of this contention learned counsel invites my attention to the classification and nature of some of the items enumerated under

the expression in the schedule. He submits that only an article which is capable of having run of motivated by electrical or mechanical power or any

fitting or accessory useful in that connection that can properly be called a produce for the purpose of schedule I.

5. It seems to me that the interpretation contended for by the learned counsel cannot be accepted. ""Manufacture"" is defined by Section 2(1-A) of

the Act ""as making, altering, ornamenting, finishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport,

delivery or disposal.

6. In understanding the scope of schedule I, this definition will have to be borne in mind. So done, schedule I will take in any industry connected

with making, altering, ornamenting, finishing, or otherwise treating or adapting any article or substance with a view to employ it for any one or more

of the purposes mentioned in the definition, In the context of this definition the words, ""electrical, mechanical or general engineering products

would only mean, in my opinion, products of electrical, mechanical or general engineering and not that the product itself should be a piece of

electrical, mechanical or general engineering or any fitting or accessory thereto. The expression, in no sense, delimits or curtails the scope of the

main provisions. Even at the very outset, the explanation expressly says so and the items detailed thereunder are given without prejudice to the

ordinary meaning of the expressions ""electrical, mechanical or general engineering products.

7. In this case, indisputably manufacturing process is employed to produce builder's hardware and parts and accessories. The factory melts brass

utensils or brass ingots and the melted alloy is poured into moulds of the required articles. The castings thus produced are rough ones and these are

made into fine castings by feeding them under electrically operated brushes. Finally the resultant products are chromiumplated by the process of

electroplating. Thus the petitioner's factory produces chromiumplated household and sanitary fittings which are scheduled products of electrical,

mechanical and general engineering processes. I think the, respondent was right in taking that view. It would be so even if it be held that the

products do not fall under item 20 of the explanation in schedule I because the products manufactured by the petitioner would fall within ""electrical,

mechanical, or general engineering products"". On this, view of the relative statutory provisions and the character of the manufacturing process

employed by the petitioner, the first point raised by the learned counsel has to be rejected.

8. The petition is allowed and the rule nisi is made absolute only in respect of that portion of the impugned order which directed the petitioner to

remit the employer's share of contribution, full double administrative charges and penal damages in respect thereof for the period from November

1952 to 31st March 1956 and in other respects, the petition will stand dismissed.
No costs.