

(1992) 08 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2645 of 1986

Hermes Industries Corporation and Another

APPELLANT

Vs

Regional Provident Fund Commissioner for Mah. and Others

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Citation : (1993) 3 LLJ 574

Hon'ble Judges : N.D. Vyas, J

Bench : Single Bench

Advocate : K.S. Bapat, instructed by R.J. Kochar, for the Appellant; H.V. Mehta and N.V. Masurkar, for the Respondent

Final Decision : Allowed

Judgement

D. Vyas, J.—By the present petition under Article 226 of the Constitution of India, the petitioners are challenging recovery notices issued by the 2nd Respondent under the Maharashtra Land Revenue Code, 1966. These recovery notices are in respect of the alleged claim of the 1st Respondent against the petitioners, under the provisions of the Employees' Provident Fund Act, 1952.

2. It is the case of the petitioners that although the 1st petitioner and Herms Enterprises Corporation are both separate entities, the 1st Respondent has tried to invoke the provisions of the Employees' Provident Funds Act, 1952, in order to treat them as one and the same. It is the case of the petitioners that there is no functional integrity as required by law in respect of the two units. On the other hand Mr. Mehta, the learned counsel appearing for the Respondent submitted that there was such functional integrity and tried to justify the notices of demand and the recovery certificates.

3. Admittedly in pursuance of the show cause notices issued against the petitioners in respect of all the demands except the demand of Rs. 3131/-, the petitioner had not appeared before the 1st Respondent to show cause. It is the petitioner's grievance that they had entrusted all the papers pertaining to the

demand notices to their Advocate Mr. S.A. Vaswani. However, the said Advocate unfortunately expired and the petitioner being handicapped could not appear before the 1st Respondent. It is the admitted position that except in respect of demand of Rs. 3131/- the petitioners have not been heard. I am disposing of the petition in these circumstances on a very narrow point. In the situation before me as the petitioners have both been able to avail of the opportunity of being heard, I feel that ends of justice require the same to be given to them. In the absence of the say of the petitioners on the show cause notices, I do not think that the Respondents can safely rely on the material they have. I am not, therefore, examining the petition in detail in order to find out whether there is or there is not the required functional integrity as laid down by the various authorities not only by the Supreme Court, but also this Court.

19th August, 1992

Mr. Bapat, the learned counsel for the petitioners states that the petitioners will pay Rs. 3131/- as demanded by the Respondents without prejudice to their rights and contentions. The notices of demand and recovery certificates except the same in respect of demand for Rs. 3131/- are required to be therefore, set aside and I hereby set them aside. The matter is remanded to the 1st Respondent for being disposed of according to law after giving fresh opportunity to the petitioners to reply to the show clause notices issued against them. The fact that the demand for Rs.3131/- is not quashed should not be held against the petitioners and the matter should be disposed of in accordance with law.

4. In the result, the petition succeeds partially. Rule made accordingly. No order as to costs.

Certified copy expedited.