
(2010) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 458 of 2010

Mubarak Industries

APPELLANT

Vs

Employees" Provident Fund Appellate Tribunal and Another

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 15(2)

Citation : (2010) 2 ALD 169 : (2010) 2 ALT 29 : (2010) 126 FLR 710

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : K. Sudershan, for the Appellant; R.N. Reddy, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The petitioner-industry is an establishment covered under the provisions of the Employees" Provident Fund and Miscellaneous Act, 1952. According to the petitioner, as the contributions and administrative charges etc. of its employees have not been remitted for the period from April 1995 to June 2000, an assessment order, dated 25-05-2001, was passed by the 2nd respondent-Assistant Provident Fund Commissioner, Hyderabad, fixing the due amount at Rs. 5,19,381/- and directed the petitioner to pay the said amount within a period of ten days. However, as the petitioner did not pay the same, the recovery proceedings have been initiated by the 2nd respondent on 07-01-2002. Questioning the assessment order and the recovery proceedings, the petitioner approached the appellate authority i.e. 1st respondent-Employees" Provident Fund Appellate Tribunal, New Delhi, and filed an appeal in A.T.A. No. 494 (1) of 2001. The 1st respondent-Tribunal dismissed the said appeal on 12-09-2008 on the ground that the petitioner was absent and was not evincing any interest to proceed with the matter. Thereafter, the petitioner filed an application for restoration of the appeal as provided for under Rule 15 (2) of the Employees Provident Fund Tribunal (Procedure) Rules, 1997 (for short "Rules, 1997). However, the same was dismissed by the 1st respondent on the ground that the

said restoration application is to be filed within a period of 30 days, but the same was filed on 27-01-2009 i.e. after lapse of more than 30 days. As against the said order, the petitioner approached this Court and filed the present writ petition.

2. Heard the learned Counsel for the petitioner and the learned standing counsel appearing for the respondents and perused the record.

3. It is true that Rule 15(2) of the Rules, 1997 provides for filing of an application for recalling the order of dismissal for default within 30 days and there is no provision provided for filing of an appeal against the order of dismissal along with a petition to condone the delay. Simply because such a provision is not there, it cannot be said that the Court is powerless to allow such an application. Every Court has got inherent powers and the inherent powers can as well be exercised in a case where there is no provision, particularly, in a case of this nature where substantial amounts are involved on technical grounds, and hence, the case of the petitioner cannot be thrown out saying that the application is not maintainable as the Court is not empowered to condone the delay and in which event, the persons like the petitioner will suffer irreparable loss. Of course, while exercising the said discretion, the Court or a Tribunal is always at liberty to allow the application by imposing certain conditions such as payment of costs etc.

4. In the light of the above discussion, this Court is of the view that the petitioner may be given an opportunity to advance its case before the 1st respondent-Tribunal on merits.

5. Accordingly, the writ petition is allowed, the impugned order dated 19-11-2009 passed by the 1st respondent-Tribunal is set aside, and accordingly, the restoration petition filed in A.T.A. No. 494 (1) of 2001, is ordered, however, on a condition of the petitioner depositing 50% of the amount in demand, within a period of eight weeks from today. It is made clear that in the event of its failure to comply with the above direction, the original order passed in A.T.A. No. 494 (1) of 2001, dated 19-11-2009, shall automatically come into operation. There shall be no order as to costs.