
(2011) 06 MAD CK 0184

In the Madras High Court

Case No : Writ Petition No. 6763 of 2008 and M.P. No. 1 of 2008

Sundaram Motors Ltd.

APPELLANT

Vs

The Employees Provident Fund

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1)

Provident Funds Act, 1925 — Section 2A

Citation : (2011) 06 MAD CK 0184

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Sanjay Mohan, for S. Ramasubramaniam and Associates, for the Appellant; K. Ramu, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner in W.P. No. 6763 of 2008 is M/s. Sundaram Motors Limited represented by its General Manager. In that

writ petition, they have challenged an order passed by the Respondent Employees Provident Fund Department, dated 3.3.2008.

2. By the impugned order, the Petitioner company was informed that exemption u/s 17(1)(a) of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 was granted to M/s. Sundaram Motors Private Limited with effect from 1.7.1960 by G.O. Ms. No. 1725,

Labour, dated 20.3.1963. However, subsequently, by an order dated 24.12.1970, this Court had permitted the said establishment to be

amalgamated with M/s. T.V. Sundaram Iyengar and Sons Limited. By the said order, this Court ordered that all the assets of M/s. Sundaram

Motors Private Limited including immovable and movable properties, investments

in shares, workshop tools, goods in transit, advances of monies of all kinds, etc., stood transferred and vest with M/s. T.V. Sundram Iyengar and Sons Limited and the existence of M/s. Sundaram Motors Private Limited, Chennai-6 came to an end. Because of the amalgamation of M/s. Sundaram motors Private Ltd., the said company had lost its separate legal entity with effect from 1.4.1970. In terms of condition No. 29 stipulated under para 27AA of the Employees Provident Funds Scheme, for the grant of exemption u/s 17 of the Employees Provident Funds and Miscellaneous Provisions Act, in case of any change of legal status as a result of merger, demerger, the exemption will stand revoked. Therefore, no exemption can be granted to the Petitioner company, which is the division of M/s. T.V. Sundaram Iyengar and Sons Limited. The Petitioner was directed to merge the Sundaram Motors Provident Fund Trust with the main Provident Fund Trust of M/s. T.V. Sundaram Iyengar and Sons Limited with effect from 31.3.2008 by transferring all the monies and securities held in the name of M/s. Sundaram Motors Provident Fund Trust to the name of Provident Fund trust of M/s. T.V. Sundaram Iyengar and Sons Limited along with previous accumulation statement after passing a resolution by its Board of Trustees. It was also informed that the Petitioner M/s. Sundaram Motors Private Limited will be treated as a branch unit of M/s. T.V. Sundaram Iyengar Sons and Limited, which is also a covered and exempted establishment under the Act, as per Section 2A of the PF Act with effect from 1.3.2008.

3. The writ petition was admitted on 18.3.2008. Pending the writ petition, this Court had granted an interim stay initially for a limited period and it was extended from time to time. On notice from this Court, the Respondent has filed a counter affidavit, dated 21.8.2010.

4. In the meanwhile, the second writ petition came to be filed by M/s. Madras Auto Service challenging the similar order, dated 2.7.2008. That writ petition was admitted on 11.7.2008 and was directed to be posted along with the earlier writ petition. Pending that writ petition, an interim stay was granted against the impugned order. In the second writ petition also, the Respondent had filed a counter affidavit, dated 21.8.2010.

5. Heard the arguments Mr. Sanjay Mohan, learned Counsel appearing for M/s. S. Ramasubramaniam Associates for the Petitioner in both writ

petitions and Mr. K. Ramu, learned Standing Counsel for the EPF Department.

6. The contentions raised by the Petitioner was that M/s. T.V. Sundaram Iyengar and Sons Private Limited had its own Provident Fund applicable

to its employees. Even after amalgamation, M/s. Sundram Motors Private Limited sought for continuing the existing Sundaram Motors Staff

Provident Fund as per the exemption granted earlier. The Respondent by a communication, dated 24.2.1971 had indicated that their office has no

objection to maintain the register of M/s. Sundaram Motors Private Limited as a separate division of T.V. Sundaram Iyengar and Sons Private

Ltd. Periodical inspections were done. By an amendment made to EPF Scheme, 1952, paragraph 27AA was introduced, by which it is stated that

all exemptions already granted or to be granted hereafter u/s 17 of the Act or under paragraph 27A of the scheme shall be subject to terms and

conditions as given in the Appendix A.

7. Entry 29 in Appendix A reads as follows:

29. In case of any change of legal status of the establishment which has been granted exemption, as a result of merger, demerger, acquisition, sale,

amalgamation, formation of a subsidiary, whether wholly owned or not, etc., the exemption granted shall be revoked and the establishment should

promptly report the matter to the RPFC concerned for grant of fresh exemption.

8. Even after the introduction of paragraph 27AA of the Scheme and Appendix-A with effect from 6.1.2001, continued inspection was done by

the Respondent. Therefore, they cannot suddenly ask for merger of the PF Trust. The reasoning given by the Respondent in the impugned order

was not germane. There was no retrospective effect given to paragraph 27AA read with Appendix A of the Scheme and it cannot have any

application to the merger done earlier. The Respondent had continued to treat the scheme as a separate entity and there is no reason to merge the

funds with the company's fund. Section 17 contemplates an exemption to an establishment and it is shown that it is a separate establishment

notwithstanding its run by the same company.

9. In the counter affidavit, it was stated that by virtue of an order of this Court, the entire asset of M/s. Sundaram Motors Private Limited were

transferred to M/s. T.V. Sundram Iyengar and Sons Private Limited. Due to amalgamation, the original company had lost its separate legal entity.

Therefore, they cannot enjoy any further exemption. Since M/s. T.V. Sundram Iyengar and Sons Private Limited is also an exempted establishment

u/s 17(1)(a), all its units and branches will also be governed by the exemption status. The Petitioner cannot run two different trusts, one in the name

of existing company and the other in the name of the company which is no longer in existence.

10. It was stated that paragraph 27AA of the EPF Scheme, 1952 clearly stipulates that in case of change of legal status, the exemption will stand

revoked. Therefore, in the absence of any law for continuing the exemption in the name of the non existing company, the Petitioner cannot have any

right to seek for continued exemption. As the statutory scheme itself indicated that on such a change of status, the exemption cannot continue and

there is no estoppel or the Petitioner cannot rely upon any correspondence between the parties. Further by the merger of two trusts, the employees

who are the beneficiaries were not put to any prejudice.

11. The stand of the Respondent is in consonance with the statutory scheme framed by the Central Government. The Petitioners company cannot

be said to be an aggrieved party. In fact, in both the writ petitions, they have not even made the employees as parties to ascertain their views. Even

otherwise, when the company does not exist, it is unthinkable that exemption can continue in the name of the trust alone. It is fair and proper that

the Petitioner must merge the existing trust with the trust run by their parent company. The merger can never cause any prejudice to the workmen

who are subscribers to the earlier trust.

12. The argument that the scheme cannot have retrospective effect does not stand to reason. First of all, it is a matter of exemption. Secondly, any

amendment will definitely have impact on the existing exempted establishment. In the present case, the original exempted unit does not exist.

Therefore, this axiomatic exemption also must come to an end. By cancelling the exemption, the workers are not going to lose, because even after

the merger, the parent company continues to be an exempted establishment and it will only be a matter of maintaining accounts by a single trust.

13. In view of the above, both the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected

miscellaneous petitions stand closed.