IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35690 of 2015

Assistant Provident Fund
Commissioner
Office of the Regional Provident
Fund Commissioner
Bhavishya Nidhi Bhawan
Dr.Balasundaram Road
Coimbatore-641 018 ... Petitioner

Vs

1 The Presiding Officer [
Employees Provident Fund Appellate Tribunal
Scope Minar Core-II 4th Floor Lakshmi
Nagar New Delhi-110 092

2 M/s.Sam Turbo Industry P Ltd
Avinashi Road Neelambur
Coimabatore-641 062 .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records relating to the proceedings of 1st Respondent dated 09.04.2012 in ATA No. 515(13) 2011 and quash the order passed therein.

For Petitioner : Ms.R.Meenakshi

ORDER

Heard Mr.R.Meenakshi, the learned counsel for the petitioner.

2. The Assistant Provident Fund Commissioner is the petitioner in this writ petition and the challenge is to an order passed by the Tribunal/the first respondent herein, under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' in short).

3. The second respondent preferred an appeal before the first respondent Tribunal as against the order passed by the authorised officer, dated 18.7.2011, levying damages under

Section 14-B of the Act, on account of the belated remittance of Provident Fund contribution, contending that mere delay in payment of contribution does not ip so facto invite levy of damages. In support of its contentions, the second respondent relied upon the decision of this Court in the case of RPFC Tamil Nadu vs. The South India Flour Mills Pvt Ltd., 1986 LAB 1 C 650 (Madras) and the decisions of the Honourable Supreme Court in Employees' State Insurance Corporation vs. HMT Limited and another (2008(1) LLJ 814) and the decisions of the Gujarat and Orissa High Courts. Further, the second respondent submitted that they have fully remitted the contribution and administrative charges and there is no default. It is only because the company became a sick industrial undertaking, they could not remit the contribution in time and there is no mensrea or any illegal motive to commit default in payment of contribution.

4. The petitioner, who was respondent in the appeal petition, filed a counter statement inter alia, apart from placing facts, contending that financial crunch alone will not be sufficient for waivering penal damages for depositing provident fund contribution. In support of such contention, reliance was placed upon the decision of the Honourable Supreme Court in the case of Hindustan Times Ltd., Union of India (1998 I LLJ 682). Further, the petitioner contended that the word 'default' in Section 14-B of the Act means nonpayment of obligation by a party bound to pay and it also includes omission or failure to perform a legal or contractual duty and will embrace the idea of dishonesty and the omission of law is discreditable.

5. The appellate Tribunal heard the matter and after taking note of Sections 14-B and Section 32-A of the Act, pointed out that the power to impose damages under Section 14-B is a judicial power and it confers a discretion upon the Provident Fund Commissioner to impose damages not exceeding the amount of arrears within the ceiling that is imposed by the statute and the nature of power conferred on him is quasi judicial. Further, it was pointed out that neither Regulation 32A nor Regulation 32B can be regarded as inflexible, while levying the damages. Due consideration is required to be given to the situation which led to default in remittance of dues by the employer. That apart, the Tribunal has given certain other factual reasons as well as relied on the decisions of the Honourable Supreme Court in the case of Petrolight (India) Ltd., vs. Regional Director (AIR 1994 SC 521). Ultimately the Tribunal did not grant full relief to the second respondent but restricted the damages to 5% per annum.

6. The petitioner now challenges the said exercise of discretion by the Tribunal raising factual as well as legal

contentions. In my view, the Tribunal is the last fact finding authority and the Tribunal exercised its discretion and did not set aside the order in its entirety, but restricted the damages to particular level. In the absence of any perversity in the exercise of discretion by the Tribunal, this Court is not inclined to examine the order passed by the appellate Tribunal as if acting as a second appellate authority.

7. In the light of the above on facts, this Court is of the view that the impugned order does not call for interference. Accordingly, the writ petition fails and is dismissed. It is made clear that this order has been passed taking into consideration the facts and circumstances placed before the Tribunal and that the Tribunal did not give full relief to the second respondent, but only granted a reprieve, in exercise of discretion and in the absence of any perversity in the exercise of such discretion, this Court is not inclined to interfere with the order under challenge and the same cannot be cited as a precedent.

8. In the result, the writ petition is dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

msk
To

1 The Presiding Officer [
Employees Provident Fund Appellate Tribunal
Scope Minar Core-II 4th Floor Lakshmi
Nagar New Delhi-110 092

+1 cc to Ms.R.Meenakshi, Advocate, sr.60496

W.P.No.35690 of 2015

ar iii
kra 20.11.2015