IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1560 of 2016
and
C.M.P.No.19312 of 2016
and
W.P.No.43371 of 2016
and
W.M.P.No.37229 of 2016

In W.A.No.1560/2016:-

The Assistant Provident Fund Commissioner,
Employees PF organization, Sub-Regional Office,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018. ... Appellant

.. Vs ..

1. M/s.Renaissance RTW Asia (P) Limited,
Rep. by its Director Mr.C.Ananda Kumar,
No.1, Thennampalayam, Tirupur,
Tamil Nadu - 614 604.

2. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Ministry of Labour and Employment,
Government of India,
4th Floor Core 2, SCOPE Minar,
Laxmi Nagar, New Delhi - 110 092. ... Respondents

In W.P.No.43371/2016:-

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore. ... Petitioner

.. Vs ..

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
SCOPE Minar Core-II
4th Floor, Lakhsmi Nagar,
New Delhi - 110 092.

2. M/s.Renaissance RTW Asia (P) Limited,
No.1, Thennampalayam,
Tirupur - 641 604, Coimbatore. ... Respondents

Prayer in W.A.No.1560/2016: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 03.08.2015 passed by this Court in W.P.No.8641 of 2015.

Prayer in WP.No.8641 of 2015:Writ Petition has been filed, praying for issuance of a writ of mandamus, directing the first respondent to implement the order dated 15/9/2014, passed by the second respondent in proceedings bearing B.T.A.No.884(13)/14.

Prayer in W.P.No.43371/2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari to call for the records relating to the proceedings of the first respondent dated 01.10.2009 in A.T.A. No.666 (13) of 2009 and quash the same.

In W.A.No.1560/2016

For Appellant	:	Ms.R.Meenakshi
For R-1	:	No Appearance
For R-2	:	Tribunal

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In W.P.No.43371/2016

For Petitioner	:	Ms.R.Meenakshi
For R-1	:	Tribunal
For R-2	:	No Appearance

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COMMON JUDGMENT
(Judgment of the Court was delivered by
HULUVADI G.RAMESH ,J.,)

The writ petition in W.P.No.43371 of 2016 is filed seeking to quash the order dated 01.10.2009 passed by the Employees Provident Fund Appellate Tribunal in A.T.A.No.666 (13) of 2009, in and by which, damages at 5% was imposed as penalty for the delayed remittance of the E.P.F. contribution taking into consideration the financial condition of the Company viz., M/s.Renaisance RTW Asia (P) Limited.

2. The writ appeal in W.A.No.1560 of 2016 is filed by the Employees Provident Fund Organization against the Order dated 03.08.2015 made in W.P.No.8641 of 2015 filed by the aforesaid Company, in and by which, the Assistant Provident Fund Commissioner, Employees Provident Fund Organization was directed to take into consideration the Order dated 15.09.2014 passed by the Employees Provident Fund Appellate Tribunal in A.T.A.No.884 (13) of 2014 and pass orders.

3. The Appellate Tribunal in the said Order dated 15.09.2014 directed the Employees Provident Fund Organization to comply with its earlier Order dated 01.10.2009 passed in A.T.A.No.666(13) of 2009 and adjust the payment already made by the Company and impose the actual cost and charges in terms of the Order passed in W.P.(MD) No.10336 of 2010 in Sitalakshmi Mills Limited Vs. Joint Commissioner of Employees Provident Fund.

4. For the sake of convenience, the parties herein are referred to as arrayed in the Writ Appeal. The 1st respondent is carrying on business of manufacturing knitted and woven ready made garments since 1995. Its branches were initially allotted three separate Employees' Provident Fund (EPF) Account Numbers, namely, TN/CBE/72902, TN/CBE/72903 and TN/CBE/34439, under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act,1952, and, subsequently, the first two accounts were surrendered due to consolidation of the employees of the 1st respondent company and its branches into one, and hence the current contributions towards the EPF are remitted by the 1st respondent under the third account bearing No. TN/CBE/34439. The appellant passed three separate orders, all dated 02.01.2009, in respect of the aforesaid three EPF accounts, and imposed on the 1st respondent a sum of Rs.2,00,526/-, Rs.5,53,702/- and Rs.3,84,304/- respectively, aggregating to Rs.11,38,532/- towards penalty under Section 14-B of the Employees' Provident Fund and Miscellaneous provisions Act, 1952 for the delayed remittance of the EPF contributions. The 1st respondent challenged the said order by filing an appeal in A.T.A.No.666 (13) of 2009 before the second respondent, who, by an order, dated 01.10.2009, determined the quantum of damages at 5% for each instance of delayed remittance, totalling to a sum of Rs.1,62,989/-, and the excess amount of Rs.9,49,501/- is refundable/adjustable by Employees' Provident Fund Organisation. Challenging the said Order dated 01.10.2009, the Employees Provident Organisation filed W.P.No.43371 of 2016. The 1st respondent made representations to the appellant seeking refund the said excess amount paid, but no orders have been passed. However, vide an order, dated 13.08.2014, the appellant has attached the bank accounts of the 1st respondent and challenging the same, the 1st respondent filed an appeal in A.T.A.No.884(13) of 2014 before the second respondent-Appellate Tribunal, and by the order, dated 15.09.2014, the Appellate Tribunal, disposed of the said appeal, directing the 1st respondent to comply with its earlier order, dated 01.10.2009, passed in A.T.A.No.666(13) of 2009, and adjust the payment already made, and impose the actual cost and charges in terms of the order passed in Writ Petition (MD) No.10336 of 2010 in Sitalakshmi Mills Ltd. v. Joint Commissioner of EPF. Aggrieved by the same, W.P.No.43371 of 2016 has been filed by the Employees Provident Fund Organization.

5. Heard the submissions made by the learned counsel appearing on either side.

6. The Employees' Provident Fund and Miscellaneous provisions Act, 1952 is a beneficial legislation, for the benefit of the employees and imposition of damages is also for benefit of the employees.

7. However, under Section 14-B of the said Act, which is considered purely as a penal provision, the authority concerned, while imposing damages in case of failure to carry out a statutory obligation, should treat the proceedings as quasi-criminal proceedings and consider whether the employer had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or in disregard of its obligation.

8. In the case on hand, the second respondent had categorically held that there is no enquiry or finding of fact that the first respondent had willfully and deliberately withheld the provident fund contribution. The second respondent further held that the levy of damages imposed in the case on hand are not as per the amended provisions of Para 32A of the EPF Scheme. The second respondent, on an overall factual conspectus of the matter, thought it just and proper to impose damages at 5%.

9. When things stood thus, it is the plea of the first respondent that the appellant attached its bank accounts and challenging the same, the first respondent approached the second respondent/Tribunal, which by order dated 15.09.2014, directed the appellant to comply with its earlier order dated 01.10.2009. Despite such specific direction issued by the second respondent/Tribunal, the appellant did not implement the same and that necessitated the first respondent to filed W.P.No.8641 of 2015 seeking implementation of the said order dated 15.09.2014.

10. In the said writ petition, a learned Single Judge, by order dated 03.08.2015, directed the appellant to pass orders within a period of six weeks. Assailing the said order, the instant writ appeal is filed.

11. The question that arises for consideration is whether the pre-amended provision of the EPF Scheme or the post amended provision of the EPF Scheme are applicable to the case on hand.

12. A Division Bench of the Bombay High Court in the case of Union of India and Others Vs. Super Processors reported in (1993) II LLJ 203 (Bombay), has held as follows:-

> "When an occasion arises for the Regional Provident Fund Commissioner to exercise his

> discretion after October 1982, he will have to exercise the discretion in accordance with the guidelines which are in force at that time. It may be that the default had taken place prior to October 1982. At the time when the damages are determined, if the revised guidelines are in force, then those guidelines must be applied. Such an occasion may arises either because a case is pending or it may arise if the matter is remanded to the officer for fresh determination."

13. For non-payment of the provident fund contribution for the period from 2006 to 2008, an amount of penalty has been imposed by way of damages. The observations made by the Bombay High Court in the decision reported in (1993) II LLJ 203 (Bombay) in the case of Union of India and Others Vs. Super Processor (cited supra) are squarely applicable to the facts of the present case. In view of the said decision of the Bombay High Court, it is necessary that revised guidelines have to be followed for the past period also.

14. In that view of the matter, we clarify that the appellant has to do the needful in accordance with law and for that purpose remit the matter to the appellant for reconsideration. The appellant is directed to pass orders in the light of the observations made above within a period of eight weeks from the date of receipt of a copy of this judgment.

15. With the above observation, both the Writ Appeal and the Writ Petition are disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jrl
To
The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Ministry of Labour and Employment,
Government of India,
4th Floor Core 2, SCOPE Minar,
Laxmi Nagar, New Delhi - 110 092.

+1cc to Mr.R.Meenakshi, Advocate SR.No.80580 dt.14.11.2017

W.A.No.1560 of 2016
and
W.P.No.43371 of 2016

AP(CO)
sm:8.12.2017