IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33808 of 2014

Central Board of Trustees, EPF
Rep.by Assistant Provident Fund Commissioner
O/o.Employees Provident Fund Organization
Regional Office,
Tambaram,
Chennai 600 045.

...Petitioner

vs.

1. Presiding Officer
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, CORE II, 4th Floor,
Lakshmi Nagar District Centre
Lakshmi Nagar
New Delhi 110 092.

2. M/s.Hong Kong Kid Leathers,
No.14, Sargunar Salai, Anna Salai,
Nagalkeni, Chrompet,
Chennai-600 044.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order of the 1st respondent in AR.No.690(13)2012 dated 08.01.2014 and to quash the same by the said order.

For Petitioner : Mr.R.Vishnu
for Mr.K.Ramu

For Respondents : R1-Tribunal
Mr.V.S.Paul Raj for R2.

O R D E R

The order dated 08.01.2014 passed in A.R.No.690(13)2012 is under challenge in the present writ petition.

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2. The writ petition is filed by the Central Board of Trustees, EPF, challenging the order passed by the Appellate Tribunal granting waiver of 100% damages along with interest awarded by the competent authority by invoking Section 14B of the EPF Act.

3. The petitioner states that the second respondent is carrying on business of leather manufacturing by purchasing semi finished leather and converting into finished products and selling, and the second respondent company is covered under the EPF and MP Act, and were paying the dues under the Act till 2007. On account of the fact that the second respondent was a defaulter of monthly Provident Fund, initiated proceedings under the EPF and MP Act and the damages along with interest was also imposed under Section 14B and 7Q of the Act. The said order was taken by way of an appeal under Section 7I of the Act before the Appellate Tribunal.

4. The learned counsel for the writ petitioner states that the second respondent/Company was not declared as a sick unit under the BIFR proceedings. Thus, mere pleading of the second respondent that it is having a financial crisis, cannot be a ground to grant 100% waiver of damages along with interest which is impermissible. The Appellate Tribunal has committed an error in granting 100% waiver regarding the damages awarded as well as interest imposed by the competent authority. Such a waiver is directly in violation of the Proviso to Clause (ii) of Section 14B of the Act. In respect of scope of Section 14B of the Act, this Court passed an order in W.P.No.4633 of 2012 dated 01.10.2019, the relevant paragraphs are extracted hereunder:

> 6. The learned counsel appearing for the writ petitioner cited the judgment of this Court passed in W.P.No.17518 to 17521 of 2011 and etc., batch dated 21.06.2011, wherein the issues were elaborately adjudicated and following findings were given at Paragraph 27 and the same is as follows:
>
> "27. If it is seen in this context, then the argument made by the learned Standing counsel for the PF Authorities that the Tribunal has no power to modify the order must necessarily fail. Therefore, it must be held that the Tribunal has the power to go into all aspects of an appeal including the power to modify the orders passed by the authorities in leving damages."
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> 7. Let us now consider the spirit of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act 1952. Undoubtedly, Section 14-B of the Act provides Power to the authorities to recover damages. Where an employer makes default in the payment of any contribution to the Fund, the

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[Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to him, then they are empowered to impose penalty. Such damages not exceeding the amount of arrears, as may be specified in the Scheme.

8. However, Proviso Clause to Section 14-B of the Act enumerates that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]

9. In the present writ petition on hand, the 2nd respondent Spinning and Weaving Mills Limited is unable to establish that the company was sick and declared as a sick industry under the provisions of the Act. Only, if an application was moved by the 2nd respondent before the Board for Industrial and Financial Reconstruction (BIFR) to declare the company, the 2nd respondent may not be eligible for such a reduction of damages imposed by the competent authority under the provisions of the Employees Provident Fund Act. Therefore, it is not as if, a mere representation of a person should be considered for the purpose of reduction of the quantum of damages. Any such reduction with reference to the Proviso Clause to Section 14-B of the Act, must be done with sufficient reasoning, which is to be recorded in writing. Contrarily, the Tribunal cannot adopt a mechanical approach of reducing the damages merely based on certain blanket statements. Unless there is an adequate proof to establish and there is a reason to believe that the company was declared as sick, then alone, such a discretionary power of reducing the power of damages can be exercised and not otherwise. The Proviso Clause undoubtedly provides power to Tribunal to reduce the damages. However, reduction must be done on exceptional circumstances, where any party filing an application, is able to establish that the reasons are genuine and accordingly, the discretionary power should be exercised by the Tribunal, so as to reduce the quantum of damages.

10. Discretionary powers are to be exercised cautiously and restrictedly. The Power of discretion provided under the Proviso Clause impliedly speaks that the reasons must be recorded. In the absence of

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any reason, it is to be construed that the exercise would exceed the main provision. The Proviso Clauses are provided to exercise the discretionary power discretely and in order to mitigate the injustice, if any noticed. Thus, any such discretionary powers contemplated in the Proviso Clause of any statute, the authorities competent must be cautious and apply their mind for the purpose of such exercise of discretionary power, so as to reduce the quantum of damages, as such reduction will affect the revenue of the State. Thus, the provision regarding the discretion under the Proviso Clause would not provide any absolute power. Such a discretionary power is an exception to the main clause and therefore, every authority should ensure that the exercise of discretion does not exceed the main provision enacted, empowering the authorities to impose damages in all such cases, where there is a default. The Rule is stipulated in Section 14-B of the Act. Section 14-B of the Act is unambiguous that the authority competent is empowered to impose damages. Thus, the said power provided under the Statute will prevail over. The Proviso Clause providing Power to the authorities to reduce the damages. The Rule must be implemented at the first instance and the discretionary powers provided in the Proviso Clauses are to be exercised as an exception on exceptional circumstances. The exceptions are to be carved out only on genuine circumstances, wherein the parties approaching the Tribunal are unable to establish that they are declared as a sick industry and their financial condition is so much in distress and they are not in a position to pay the damages. Thus, Rule is to be implemented strictly and the power of discretion is to exercise discretely.

11. This being the interpretation to be provided for Section 14-B of the Act. The exercise of discretionary powers should not exceed the scope of the main provision and in such an event, exercise of discretionary power became null and void and in violation of the main provision itself.

12. This being the factum, in the present case on hand, the 2nd respondent Company has not produced any document to show that they were declared as sick union under the BIFR Act and therefore, reduction of damages is in violation of Section 14-B itself. The exercise of discretionary power by the Tribunal became excessive and under these circumstances, there is no reason whatsoever to reduce the damages imposed by the competent authority under the EPF Act.

5. This Court is of the considered opinion that the

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Tribunal has to verify whether the company filing an appeal seeking waiver of damages along with interest, is declared as a sick company under the provisions of the EPF & MP Act and the statute concerned. In the absence of any such declaration, the Tribunal cannot grant waiver of 100% damages along with interest without any basis. In view of the fact that the relief granted was based on the Proviso Clause, such relief should not exceed the original provision. The waiver granted is certainly in violation of the main provision namely 14B of the EPF Act. The main provision is to be followed in all circumstances and the Proviso Clause is to be applied only on certain exceptional circumstances, wherein the parties, who is approaching for waiver is able to establish that they are a sick company and not in a position to pay the contributions as well as the interest.

6. In the present case, the second respondent has not established before the Appellate Tribunal and that there was declared as a sick unit under the Statute. Therefore, the waiver of damages granted 100% along with interest is improper and not in consonance with the powers conferred on the tribunal under the Proviso Clause (ii) of Section 14B of the EPF & MP Act.

7. Under these circumstances, the order dated 08.01.2014 passed by the first respondent in A.R.No.690(13)2012 is quashed. The writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb
To
The Presiding Officer
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, CORE II, 4th Floor,
Lakshmi Nagar District Centre
Lakshmi Nagar
New Delhi 110 092.

+1cc to Mr.K.Ramu , Advocate SR.No. 97815

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A.SK(21/01/2020)

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