



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE **S. S. SUNDAR**

W.P. (MD) No. 1112 of 2011 and

M.P. (MD) No. 1 of 2012

WEB COPY

M/s. Bojaraj Textile Mills Limited
regd. office of M/s. Seethalakshmi Complex,
First Floor, Thirunagar 3rd Stop,
Thirunagar, Madurai - 625006
through its Director,
M.K. Kaladharbabu ... Petitioner

vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Lakshmi Nagar, New Delhi - 110 092.
2. The Regional Provident Fund Commissioner No. II,
Employees Provident Fund Organization,
Regional Office, Lady Doak College Road,
Madurai - 625 002.
3. The Recovery Officer,
Employees' Provident Fund Organization,
Regional Office, Lady Doak College Road,
Madurai - 625 002 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records from the file of the first respondent herein in A.T.A.No.437 (13)2009 and to quash the order, dated 21.12.2010 passed by the first respondent.

For Petitioner	: Mr. P. Chandrabose
For R2	: Mr. V. S. V. Venkateshwaran

ORDER

This Writ Petition is filed challenging the order of Employees Provident Fund Appellate Tribunal, dated 21.12.2010 in A.T.A.No.437(13)2009 confirming the order passed by the second respondent, imposing the penalty under Section 14B of the Employees' Provident Fund Act.

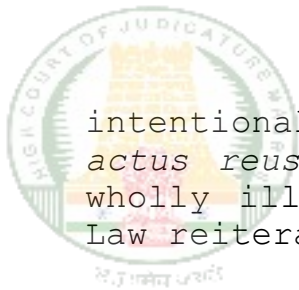


2.The petitioner is an industrial undertaking carrying on business in textiles. Stating that due to recession in the textile industry, the petitioner had to reduce their man power and was struggling by legal dues for the employees. It is also stated that on account of financial crunch, the petitioner could not comply with their statutory obligations. It is admitted that the petitioner was not able to remit the contribution payable under Statute and there was a delay in remitting the arrears of contribution to the tune of Rs.48,53,813/-. It was on account of various reasons, the petitioner was forced to approach this Court to pay the entire contribution amount payable in monthly instalments. This Court, in a writ petition in W.P.No.23920 of 2002, permitted the petitioner to pay the amount in eight monthly instalments. It is admitted that the petitioner has remitted the amount as per the order. There were subsequent arrears of contribution amount and the petitioner paid that also in 20 monthly instalments as per the direction of this Court in W.P.(MD)No.821 of 2004.

3.The first respondent by notice, dated 22.05.2006, called upon the petitioner to pay the interest and damages for the belated remittance. It is admitted that the petitioner has paid the interest and there is no due towards interest. However, a sum of Rs.59,38,403/- was imposed by way of damages under Section 14B of the Employees Provident Fund Act. Hence, the petitioner preferred an appeal under Section 7-I of the Act before the first respondent challenging the levy of penalty under Section 14B of the Act. The Tribunal/first respondent dismissed the appeal referring to a circular, dated 17.06.2004 as a precedent. Challenging the order of first respondent, dismissing the appeal preferred by the petitioner, the above writ petition is filed.

4.The learned Counsel for the petitioner submitted that the petitioner has remitted the arrears of contribution with great difficulty pursuant to the order of this Court. The petitioner has remitted the entire dues towards interest pursuant to the order of the second respondent. Since the delay in remittance of dues was purely on account of the poor financial status of the industry and there was no wilful neglect, it is submitted that the respondents cannot levy of damages under Section 14B of the Act. It is further contended that the petitioner Mill itself was closed and it is in these circumstances, referring to impugned order passed by the first respondent, the petitioner would submit that the Tribunal has dismissed the appeal only on the ground that the financial incapacity is not a reason to avoid damage under Section 14B of the Act.

5.It is stated that the Honourable Supreme Court, in several cases, has held that the damages under Section 14B of the Act can be levied only in a case, where, the delay in remittance was caused



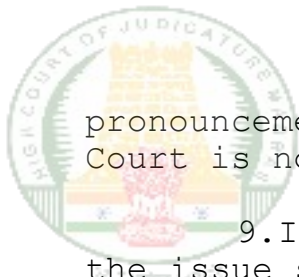
intentionally and that in a case where, there is no *mens rea* or *actus reus* on the part of the petitioner, the levy of damages is wholly illegal and opposite to the well established principles of Law reiterated by the Honourable Supreme Court in similar cases.

6.The learned Counsel for the petitioner relied upon the judgment of Honourable Division Bench of this Court in the case of **Regional Provident Fund Commissioner II, Employees' Provident Fund Organisation, Madurai and another vs Sree Visalam Chit Funds Limited, Palathur and another**, reported in **2010 (4) L.L.N.706**, wherein, the Honourable Division Bench has held as follows:

"30.In our considered opinion, as we have already concluded, unless it is established that such failure to pay the contribution was attributable to the *mens rea* or *actus reus* on the part of the employer, question of levying damages under S.14B of the Act does not arise. It has been repeatedly held by Hon'ble Supreme Court that simply because the statutory provision enables an authority to impose penalty, it does not mean that such penalty should be imposed in a mechanical manner without looking into the attending circumstances and the facts as to whether there was any *mens rea* or *actus reus* on the part of the employer."

7.The position has been clarified by the Honourable Supreme Court in the case of **Employees' State Insurance Corporation vs H.M.T. Limited and another**, reported in **2008 (1) L.L.N.491**, with reference to Section 85(B) of Employees' State Insurance Act, 1948. Though the said judgment was with reference to the payment of levy of damages under Employees' State Insurance Act, 1948, having regard to the fact that provisions under the Employees' State Insurance Act, 1948 and Employees Provident Fund Act, are in *pari materia*, this Court is quiet justified in following the judgment of Honourable Supreme Court above referred to. The Honourable Supreme Court has held that existence of *mens rea* or *actus reus* to contravene a statutory provisions was held to be a necessary ingredient for levy of damages and/or the quantum thereof.

8.Following the precedents, this Court is able to see that factual issue has already been answered by the first respondent. The first respondent has agreed with the contentions of the petitioner that the delay in remittance was on account of financial reasons and there was no deliberate or wilful intention. The question regarding financial difficulty of the industry was accepted but answered by the first respondent saying that the financial constraints is a common problem in every industrial establishment and that the same cannot be considered as a valid explanation. The view expressed by other High Court with reference to EPF contribution was relied by the first respondent to sustain the order levying penalty under Section 14B of the Act. In view of the



pronouncement of Honourable Supreme Court on the same issue, this Court is not inclined to accept the view of other High Courts.

9. It is also not in dispute that the petitioner has raised the issue specifically with reference to the facts. From the facts, this Court is able to see that the petitioner has approached this Court to get time to pay contribution payable to the respondents in monthly instalments on two occasions. The respondent levied penalty on a wrong premise that the financial difficulties or such reasons have no role in mitigating the liability for payment of penalty under Section 14B of the Act. Since several decisions reiterated by Honourable Supreme Court and the Division Bench of this Court have not been followed, this Court is of the view that the impugned order is liable to be quashed.

10. The question of levy of damages under Section 14B of the Act arose only when the employer fails to pay the contribution intentionally or without sufficient cause. Unless, there is *mens rea* or *actus reus* on the part of the employer, damages cannot be levied under Section 14B of the Act. Hence, the writ petition is liable to be allowed and accordingly, the writ petition is allowed and the impugned order passed by the first respondent, in A.T.A.No.437(13) 2009, dated 21.12.2010, confirming the order of the second respondent, is set aside.

11. During the pendency of the writ petition, an interim order was passed on condition that the petitioner deposit a sum of Rs.30,00,000/- and accordingly, the petitioner has deposited a sum of Rs.30,00,000/- before the second respondent towards the damages levied under Section 14B of the Act. The second respondent is directed to refund the deposited amount of Rs.30,00,000/- within a period of six weeks from the date of receipt of a copy of this order, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

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Sub Assistant Registrar (CS)

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To

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



2.The Regional Provident Fund Commissioner No.II,
Employees Provident Fund Organization,
Regional Office, Lady Doak College Road,
Madurai - 625 002.

3.The Recovery Officer,
Employees' Provident Fund Organization,
Regional Office, Lady Doak College Road,
Madurai - 625 002.

+1CC TO MR.P.CHANDRABOSE, Advocate Sr. No.89123

W.P. (MD) No.1112 of 2011

23.09.2019

KG (CO)

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