



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.No.14264 of 2015

and

M.P.No.3 of 2015

The Board of the Trustees of the
Employees Provident Fund Organisation
Represented by the Assistant Provident Fund
Commissioner, Regional Office, Tambaram,
No.3, Rajaji Salai, Chennai - 600 045.

.. Petitioner

-vs-

1. The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
4th Floor, Core 2, Scope Minar,
Laxmi Nagar, New Delhi - 110 092.

2. M/s.Kaleesuwari Refinery (P) Ltd.,
No.5, Mambakkam Road,
Chittallapakkam, Vengaivasal,
Chennai - 600 073.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari calling for records of the first respondent relating to the impugned order of the first respondent in ATA No.182(13) 2013 dated 03.11.2014 and quash the same.

For Petitioner : Mr.K.Ramu

For Respondent-2 : Mr.Christy Paulraj

Respondent-1 : Tribunal



O R D E R

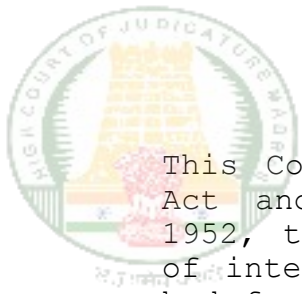
The writ petition has been filed challenging the order passed by the first respondent in ATA No.182(13) 2013 dated 03.11.2014.

2. The second respondent herein was quantified the P.F. claim under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the Act) for the period between March, 1997 to February, 2011 as Rs.46,79,399/-. The interest under Section 7Q was levied at Rs.33,08,402/-. The second respondent had paid both these claims. Vide proceedings of the Assistant Provident Fund Commissioner, dated 15.02.2013, the damages were ordered to be recovered from the second respondent under Section 14B of the Act to the tune of Rs.43,13,989/-. The appeal preferred by the second respondent against the order of the Commissioner was allowed by the first respondent-Tribunal through the impugned order dated 03.11.2014. The department is aggrieved against the order setting aside the imposition of damages under Section 14B of the Act.

3. The learned standing counsel appearing for the petitioner predominantly raised two grounds assailing the orders of the Appellate Tribunal. Firstly, he would submit that when the Tribunal had found that the Commissioner had not rendered findings that the second respondent had acted with mens rea, to flout the statutory provisions, the Tribunal ought to have discussed the facts of the case to substantiate the same. According to the learned counsel for the petitioner, the default pertains to non remittance of P.F. amount of 258 of its employees, which is a relevant matter. Secondly, he would submit that the findings of the Appellate Tribunal that the Commissioner had not established that the second respondent had acted with mens rea in the original order dated 15.02.2013, is factually incorrect, since the aspect was factually dealt with in the order.

4. Per contra, the learned counsel appearing for the second respondent would submit that the Appellate Tribunal had passed reasoned order, establishing the scope of levying damages under Section 14B of the Act and since the Commissioner had not properly appreciated the second respondent's case, the levy of damages is improper, which aspect has been dealt with by the Tribunal and therefore, the impugned order cannot be found fault with.

5. This Court has perused the impugned order passed by the Employees' Provident Fund Appellate Tribunal dated 03.11.2014.



WEB COPY

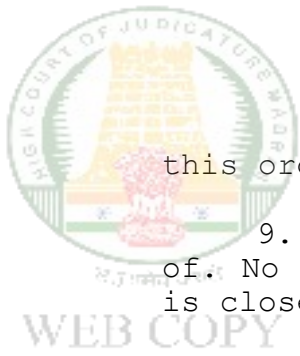
This Court, while discussing the object of Section 14B of the Act and the corresponding Employees' Provident Fund Scheme, 1952, the Tribunal had lost track of the facts leading to levy of interest and damages on the non remittance of P.F. dues and had further failed to appreciate the fact that the Commissioner had dealt with the aspect of mens rea in his original order dated 15.02.2013. Though the order of the Tribunal runs to several pages, the findings pertaining to the present case commences from the penultimate paragraph of the order. Even there, the ultimate finding that there was no mens rea on the part of the second respondent, is not substantiated with the facts of the case. Secondly, the other finding of the Tribunal that the Commissioner had not dealt with the aspect of mens rea on the part of the second respondent herein is also a factual mistake, since the order dated 15.02.2013 evidences a detailed discussion in his order. The relevant portion of the order of the Commissioner dated 15.02.2013 is extracted below:

"When the employer is denying the basic benefit of PF to a section of his own workmen violating the statutory provision especially as a complying establishment under the Act, it is beyond the comprehension of any man of ordinary prudence as to how the denial is involuntary. In fact the denial of benefit violating provisions of the Act is intentional and hence the element of mens rea is well established on the part of employer and thus the consequential default. Understanding the inescapable position when the issue is caught hold of by the Statutory authority on the basis of complaint received from workmen hither to denied benefit of Provident Fund membership was allowed to the workmen discharging the liability under the Act."

6. Thus, it cannot be said that the Commissioner had not dealt with the aspect of mens rea and as such the finding in this regard is a factual mistake.

7. Since this Court had found that the impugned order passed by the Tribunal suffers from certain factual errors and procedural defects, it would not be appropriate to set aside the order as such but remitting back the matter to the Tribunal for a fresh consideration, would secure the ends of justice.

8. In the light of above observations, the impugned order dated 03.11.2014 on the file of the first respondent is set aside and the matter is remitted back to the Central Government Industrial Tribunal, which is the present Appellate Authority, for reconsideration. The Presiding Officer of Appellate Tribunal shall endeavour to complete the proceedings and pass final orders as expeditiously as possible, in any event within a period of three months from the date of receipt of a copy of



this order.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

rsi

To:

The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
4th Floor, Core 2, Scope Minar,
Laxmi Nagar, New Delhi - 110 092.

W.P.No.14264 of 2015
and
M.P.No.3 of 2015

PCH (CO)
SU (31/08/2021)