IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.A.No.168 of 2020

M/s.G.T.K.Textiles,
Rep by its Managing Director,
102, Dhali Road,
Udumalpet – 642 126,
Tiruppur District ...Appellant/2nd Respondent

vs

1. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Dr.Balasundaram Road,
   Coimbatore. ..1st Respondent/Petitioner

2. Employees Provident Fund Appellate Tribunal,
   (Minister of Labour and Employment),
   Government of India,
   Scope Minar Core II, 4th Floor,
   Lakshmi Nagar, District Centre,
   New Delhi – 110 092 ...2nd Respondent/1st Respondent

Prayer : Writ Appeal filed under clause 15 of the Letters Patent to set aside the order dated 27.09.2019 made in W.P.No.4634 of 2012.

Prayer in W.P.No.4634/2012: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent in A.T.A. No. 364 (13)/2005 and quash the order dated 07.07.2009.

For Appellant	:	Mr.Gopalakrishnan for Mr.B.Kumarasamy
For Respondent-1	:	Ms.R.Meenakshi
For Respondent-2	:	Court

JUDGMENT

[Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.]

This Writ Appeal is directed against the order of the learned Single Judge dated 27.09.2019 made in W.P.No.4634 of 2012.

2. The appellant is a Textile Corporation. In W.P.No.4634 of 2012, an order was passed on 27.09.2019 at the instance of the writ petitioner, who is the Assistant Provident Fund Commissioner, Employees' Provident Fund Organization, challenging the order passed by the Employees Provident Fund Appellate Tribunal, namely the second respondent in ATA.No.364 (13)/2005 dated 07.07.2009. There was a delay in payment of employees provident fund contributions by the appellant herein for the period between January 1999 and February 2002. The contributions were made belatedly on various reasons like continuous loss etc. Therefore, the Writ Petitioner/first respondent herein had issued show cause notices on 03.10.2001 and 25.12.2004 under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') and the appellant was given an audience. Thereafter, an order was passed by the writ petitioner on 17.03.2005 under Section 14-B of the Act, levying a sum of Rs.3,14,834/- towards damages. The appellant also preferred an appeal before the Second respondent, namely Employees Provident Fund Appellate Tribunal under Section 7(1) of the Act. The Appellate Tribunal remanded the matter back to the first respondent herein, for fresh enquiry, wherein, the appellant had put-forth the reasons for delay in remittance of the provident fund dues.

3. According to the first respondent herein, the appellant-Company is a defaulter in payment of contribution as per the provisions of the Act and that the authorities are empowered to quantify the damages, considering the factual aspects. Thus, a sum of Rs.3,14,834 was quantified as damages under Section 14-B of the Act. After contest, the learned Single Judge had elaborately discussed the various aspects and granted time to the appellant for paying the damages quantified by the authorities in five equal installments, starting from 01.11.2019, with a default clause.

4. The learned counsel appearing for the first respondent would contend that after the order was passed by the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organization on 07.09.2021, an amount of Rs.3,14,834/- was paid by the appellant herein on various dates, viz., 02.01.2020, 25.09.2020 and 03.10.2020. The same is produced before this Court in Proceedings No.TN/RO/CBE/RECOVERY/CC-24/10643/2021 dated 07.09.2021.

5. The learned counsel for the appellant states that the said amounts were paid only because of an order of attachment that was to be passed. He further tried to persuade this Court by stating that the appellant-Company is a sick unit facing

financial crisis. However, he is unable to produce even a piece of paper to show that the case is before the NCLT or a Resolution Professional has been appointed in that regard.

6. The proviso to Section 14-B of the Act, contemplates waiver of damages, which is extracted hereunder:

14-B Power to recover damages

> "Provided further 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"

7. The learned counsel for the first respondent brought to the notice of this Court an order passed by the Hon'ble First Bench of this Court in W.A.No.101 of 2020 dated 12.02.2020 in the case of M/s.PGC Textile Corporation (P) Ltd., -vs- The Regional Provident Fund Commissioner and another, wherein, the power to recover damages under Section 14-B of the Act were discussed and it was specifically pointed out that, unless the defaulting Company establishes that it is scheme for rehabilitation, which has been sanctioned by the Board of Industrial and Financial Reconstruction (BIFR), the proviso to Section 14-B of the Act, cannot be applied. It is also held that the appellant-Company therein is not a sick Company, entitling them for waiver of damages under Section 14-B of the Act.

8. In the light of the above and also taking into account the fact that the appellant-Company has already paid the entire amount quantified by the authorities for damages, we see no reason to interfere with the order of the learned Single Judge and accordingly, the Writ Appeal is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srn

To

1. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Dr.Balasundaram Road,
   Coimbatore.

2. The Employees Provident Fund Appellate Tribunal,
   (Minister of Labour and Employment),
   Government of India,
   Scope Minar Core II, 4th Floor,
   Lakshmi Nagar, District Centre,
   New Delhi - 110 092

+1 CC to Mr.B.Kumarasamy, Advocate sr 50954
+1 CC to M/s.R. Meenakshi, Advocate sr 50784.

W.A.No.168 of 2020

KJ(CO)
SP(09/11/2021)