BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.525 of 2012
and M.P(MD)Nos.1 & 2 of 2012

M/s.Ramanathapuram District Co-operative
Printing Works Limited,
Industrial Estate,
Devakottai Road,
Karaikudi - 630 005,
Sivaganga District,
Rep. by its Special Officer. ... Appellant/Petitioner

Vs.

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

2.The Assistant Provident Fund Commissioner,
EPF Organisation,
Regional Office,
Post Box No.1,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 15.06.2012 made in W.P(MD)No.8027 of 2012 on the file of this Court.

Prayer in WP(MD). 8027/ 2012 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the impugned Order passed by the 1st respondent in A.T.A. No.797 (13)/2011 dated 19.04.2012 by confirming the order of the 2nd respondent in his proceedings in TN/RO/MDU/6072/RO/Circle.40/PDC/LD/ 2011 dated 25.05.2011 and quash the same.

For Appellant : Mr.K.Hemakarthikeyan

For Respondents : Mr.V.S.V.Venkateshwaran

JUDGMENT
(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.)

This Writ Appeal is directed against the order, dated 15.06.2012 passed in W.P(MD)No.8027 of 2012.

2.Originally, the said Writ Petition was filed by the appellant/writ petitioner challenging the demand of damages levied by the first respondent in A.T.A.No.797(13)/2011, dated 19.04.2012, which confirmed the order of the second respondent in his proceedings in TN/RO/MDU/6072/RO/Circle.40/PDC/LD/2011, dated 25.02.2011 and to quash the same.

3.The second respondent, who passed the order impugned, had categorically held that the remittance of contribution pertaining to March, 2005 to February, 2007 was made belatedly, therefore, the levy of damages to the tune of Rs.3,66,982/- was made. The same was challenged before the first respondent herein and the first respondent also confirmed the order of the second respondent, which was listed before the learned Single Judge, who had categorically stated that the authority below had considered the case of the appellant in detail and dismissed the Writ Petition. Aggrieved by the same, the above Writ Appeal is filed.

4.The learned counsel appearing for the appellant would contend that the learned Single Judge had not appreciated the facts and circumstances of the appellant's case and that had remitted the entire contribution for the period from March, 2005 to February, 2007. Further, the learned counsel would contend that the final condition of the appellant was so stringent and unable to remit the PF contribution in time for the period between March, 2005 and February, 2007 and the said delay is neither wilful nor wanton.

5.The learned counsel for the appellant also placed his reliance in ***Regional Provident Fund Commissioner II, Employees' Provident Fund Organization, Madurai and another Vs. Sree Visalam Chit Funds Limited, Palathur and another*** reported in ***2010 (4) LLN 706***, in which, paragraph Nos.27 and 30, it has been held as follows:-

> *"27.Now, let us consider the facts of the case to examine as to whether there was any mens rea or actus reus on the part of the respondent to commit default in payment*

of the contribution. At the outset, we may say that we do not find any material to hold that there was such mens rea or actus reus. It is the admitted case that under the Pension Scheme of the year 1971, the respondent was paying the contribution without any default. When the new scheme was introduced and the rate of contribution was enhanced, it was not as though the respondent was not prepared to pay the employer's contribution. However, it was only the employees, who rushed to the Court, challenging the new scheme and got an order of interim stay in the Writ Petition filed by them. It was a blanket stay order in respect of the employees contribution as well as the employers' contribution. That was the reason why, the respondent was not in a position to remit the contribution in accordance with the new scheme.

....

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 Section 14B of the Act does not arise. It has been repeatedly held by the 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."

6.Reliance was placed on the above decision, which has also been followed by the Division Bench of this Court in ***M/s.R.D.Ariyakudi Primary Agricultural Co-operative Bank Vs. Employees Provident Fund Appellate Tribunal*** reported in ***2020 LLR 229***, wherein, it has been held in paragraph Nos.7 and 8, which reads as follows:-

"*7.A perusal of the orders of the authorities below and the learned Single Judge shows that the authorities below and the learned Single Judge have not applied their mind to the fact as to whether the reason as put forward by the appellant is sufficient to waive payment or not and what should be the proportionality in imposing the damages.*

8.In view of the fact that the authorities below have not applied their mind and in view of the fact that the Honourable Supreme Court has held that mens rea is an essential ingredient, the appeal is allowed and the *impugned order of the learned Single Judge and the orders passed by the authorities below are set aside. The matter is remitted back to the Assistant Provident Fund Commissioner to once again consider the issue of mens rea before levying the damages and the said exercise may be completed within a period of twelve weeks from the date of receipt of a copy of this order. It goes without saying that the Assistant Provident Fund Commissioner will give reasonable opportunity to the appellant as well as the respondents."*

7.The learned counsel appearing for the appellant submitted that before levying the damages as a penalty element of *mens rea* is a relevant consideration. The learned counsel emphatically argued that the element of *mens rea* is needed before any penalty could be enforced and unless the element of *mens rea* or the existence of *actus reus* to contravene a statutory provision is established, the levy of damages cannot be made.

8.No doubt Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is not only with a view to compensate the employee, but also by way of penalty,it is absolutely necessary that it should be proved that there was an element of *mens rea* existing in the Act and the appellant to contravene the statutory provision.

9.However, in this case, the first order was passed by the second respondent on 25.02.2011. The said authority had narrated even the conduct of the appellant in conducting the proceedings and the authority had specifically found that the appellant's organization has lost heavily by not getting the amount on due dates by way of unearned interest while statutorily bound to pay interest to the poor workers from the due date itself. The first respondent, who had considered the appeal against the said order, also has found that all the submissions made by the appellant were duly considered and confirmed the order of the second respondent.

10.It is not the case of the appellant that they had not caused any delay, though the delay may be due to various reasons. The appellant had not adduced any evidence to enable the authorities to take a lenient view by adducing any convincing evidence.

11.In the light of the above discussions, the argument of the learned counsel for the appellant that the existence of *mens rea* was not considered by the authorities cannot be accepted and the orders passed by the respondents 1 and 2, as affirmed by the learned Single Judge, is confirmed.

12.In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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PM(CO)
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