# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 25.11.2022**

**CORAM :**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No.12946 of 2019**
**and**
**W.M.P.No.13103 of 2019**

M/s.Sivamani Spinning Mills Ltd.
Rep. by its Managing Director,
Mr.V.Ramanathan, S/o.Venkatachalam,
Bysuhalli Village, Dharmapuri-635 205. ... Petitioner

-Vs-

The Recovery Officer,
Employees Provident Fund Organization,
Ministry of Labour and Employment,
Having its Regional Office at S.J.Plaza,
Swarnapuri, Salem-636 004. ... Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records in proceedings No.CB/SL/170503/RECY/CP-13/KNG/2019, dated 12.04.2019 and quash the same as illegal, incompetent and wholly without jurisdiction and further direct the respondent to raise the order of attachment.

For Petitioner : Mr.Sunny for
Mr.Raghavachari V.

For Respondent : Mr.P.K.Panneerselvam

**ORDER**

The proclamation of sale issued in proceeding dated 12.04.2019, is sought to be quashed in the present writ petition.

2. The petitioner is M/s.Sivamani Spinning Mills Ltd. It is not in dispute that the issues were adjudicated before the competent authority under the provisions of the EPF and MP Act 1952. The competent authority passed final orders under Section 14 (b) and 7(q) of the EPF and MP Act, 1952. Thereafter, the petitioner approached the Employees' Provident Fund Appellate Tribunal, filing A.T.A.No.464(13)2013, and the Tribunal also disposed of the case. The operative portion of the order passed by the Employees' Provident Fund Appellate Tribunal is extracted as under:

> *"7. In this case, the Ld. Commissioner has not applied his mind to the issue of quantum of damages. Ld. Commissioner had blindly adopted the percentage of rates prescribed in Para 31A of the EPF Scheme, 1952. In this case the quantum of damages was pre-determined and was conveyed to the appellant while serving notice. It shows that there was no inquiry and the quantum of damages was decided prior to the conclusion of the inquiry under Section 14B of the Act. It is also noted that while imposing the penal*

*damages, the Ld. Commissioner had not found out the element of mensrea on the part of the appellant in delaying the remittance of PF dues. To impose the penal damages, the Ld. Commissioner should have to ensure that there was a willful and deliberate default on the part of the appellant while delaying the remittance of PF dues.*

*8. In view of the facts and recording made by the respondent in the impugned order it is made clear that, there was no willful default committed by the appellant in remitting the P.F. dues; hence the penal damages should be more or less compensatory in nature. The appeal preferred by the appellant to this extent has succeeded. After hearing the arguments and counter arguments, this tribunal has come to the decision that the respondent has failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions. Therefore, it cannot be held that delay in remittance of PF Contribution was deliberate. Further, since, the appellant is not a willful defaulter; no damages can be levied in view of the HMT Ltd. Case. In Terms of the above the impugned order is set aside. The appeal is allowed.*

*9. The Ld. Advocate for the Appellant as made a statement in the open court that the appellant is willing to liquidate outstanding interest determined amount in the impugned order, in installments. The request of the Appellant* *is allowed. Accordingly, the Appellant is hereby directed to remit the outstanding determined interest amount in 36 installments be payable by the 7th January and the subsequent installments be payable by the 7th day of every calendar month Hence I order accordingly. Copy of the order be sent to the parties. The file be consigned to the record room."*

3. The grievance of the writ petitioner is that the assessment was not re-adjudicated by the competent authorities pursuant to the directions issued by the Tribunal. Therefore, the petitioner was not in a position to pay the balance amount and the authorities, without complying with the directions issued by the Tribunal, issued the impugned proclamation of sale and therefore, the impugned order is to be set aside.

4. The learned counsel for the respondent objected to the said contentions by stating that as per the findings of the Tribunal, the dues were calculated and intimated to the petitioner. The petitioner themselves admitted that the interest amount will be paid in 36 EMIs. However, the respondent has stated that the petitioner had not paid the installments as per their own undertaking and on the other hand, the grievance of the writ petitioner is that the amount of interest, to be paid, had not been

properly intimated to the petitioner.

5. This Court is of the considered opinion that the issue raised by the petitioner is in narrow compass. The grievance of the petitioner is that the total amount of interest to be paid by the petitioner had not been informed by the competent authority. However, the respondent has stated clearly that the amount to be paid was already known to the petitioner and that is the reason why they had given an undertaking to settle the interest in 36 EMIs. After giving an undertaking, now they cannot turn around and say that they are not aware of the interest amount to be settled.

6. May that as it be. This Court is of the opinion that the contributions, interests and damages, levied in consonance of the provisions of the Act is to be recovered by the competent authority. This being the statutory requirement under the Act, the petitioner, by prolonging the issue, cannot take any undue advantage. Now the writ petition has been filed challenging the proclamation of sale already issued. Already the writ petition is pending for the past more than 3 years. The learned counsel for the respondent, on instruction, made a

submission that the petitioner has to pay a sum of Rs.25,14,878/- towards balance interest to be paid by the petitioner. Since the amount of interest is now informed by the learned counsel for the respondent, on getting instruction from the department, the petitioner is liable to pay the said amount.

7. In view of the facts and circumstances, the petitioner is directed to settle the said amount of Rs.25,14,878/- within a period of three months from the date of receipt of a copy of this order, failing which the respondents are at liberty to proceed against the petitioner based on the proclamation of sale, already issued by them in proceeding dated 12.04.2019. If at all the petitioner is having any doubt regarding the calculation, the petitioner is at liberty to get it clarified from the competent authorities of the respondent.

8. With these directions, this writ petition stands **disposed of**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.11.2022

Index : Yes
*Speaking order*
*sha*

To

The Recovery Officer,
Employees Provident Fund Organization,
Ministry of Labour and Employment,
Having its Regional Office at S.J.Plaza,
Swarnapuri, Salem-636 004.

**S.M.SUBRAMANIAM.J.,**

***sha***

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