BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.11781 and 12436 of 2012
and
M.P.(MD)Nos.1 and 1 of 2012

W.P.(MD)No.11781 of 2012:

Viswabarathi Textiles Private Limited,
represented by its Managing Director,
R.Subramaniam,
4/144, Bharathi Nagar, Veerapandi (Post),
Thirupur – 641 605. ... Petitioner

vs.

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

2.The Regional Provident Fund Commissioner No. II,
EPF Organization,
Lady Doak College Road,
Madurai – 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records from the file of the 1st respondent herein in No.ATA 372(13)/2011 and to quash the order, dated 08.02.2011, passed therein in relating to the damages and interest.

For Petitioner	: Mr.C.Karthikeyan
For R1	: Tribunal
For R2	: Mr.K.Murali Shankar

W.P.(MD)No.12436 of 2012:

The Regional Provident Fund
Commissioner No. II,
EPF Organization,
Lady Doak College Road,
Madurai – 625 002. ... Petitioner

vs.

1.The Employees Provident Fund
Appellate Tribunal,
New Delhi.

2.M/s.Viswabarathi Textiles Private Limited,
Trichy Road,
Vadamadurai, Dindigul District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the order in ATA No.372(13) 2011, dated 08.02.2011, passed by the 1st respondent Tribunal and to quash the same.

For Petitioner : Mr.K.Murali Sankar
For R1 : Tribunal
For R2 : Mr.C.Karthikeyan

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COMMON ORDER

The writ petition in W.P.(MD)No.11791 of 2012 is filed by the establishment for issuance of a writ of Certiorari, to quash the impugned order dated 08.02.2011 passed in No.ATA 372(13)/2011 in relating to the damages and interest. The writ petition in W.P.(MD)No.12436 of 2012 is filed by the PF Organization for issuance of a writ of Certiorari, to quash the impugned order passed by the 1st respondent in No.ATA 372(13)/2011.

2. The brief facts of the case as stated in W.P.(MD)No.11791 of 2012 are that the petitioner is carrying manufacturing textile yarns with 1000 employees upto 05.06.2006 for two units including apprentice. Right from the inception in the year 1981, the petitioner is paying EPF both for employer and the employees contribution without fail and no default until 1998. From 1998 onwards, the textile industry was facing severe crisis due to want of raw materials, machinery cost, high salary payable to textile workers, high electricity charges and high sales

tax and hence there was financial imbalance and the company could not remit EPF contribution in time. In fact, the petitioner was not able to pay the salary to the workers at the right time and the wages were paid in installments basis. In such circumstances, the EPF contribution was remitted belatedly especially for the period from 3/98 to 12/98 and 6,7,8,11/2000 to 2/2001. The respondents issued proceedings under section 14-B, dated 16.10.2003 and also letter, dated 12.02.2008. Aggrieved over the same, the petitioner preferred W.P.(MD)No.2785 and 2786 of 2010 and this Court, vide order, dated 23.11.2010, set aside the impugned proceedings and remitted the case back to the respondent to provide sufficient opportunity to the petitioner and pass appropriate orders. On 01.02.2011, the respondent called for certain documents but the petitioner could not produce the earlier pay registers and connected documents, since they are old records. Finally, the petitioner had submitted a statement and also represented orally. Without considering the petitioner's submission, the EPF Organization had passed final orders. Aggrieved over the same, the establishment has filed an appeal before the Tribunal. The Tribunal has not considered any grounds stated in the grounds of appeal and has passed an order, dated 08.02.2011, without any basis imposed the damages upto 15% per annum. Aggrieved over the same, the writ petition in W.P.(MD)No.11781 of 2012 is filed.

3. The EPF organization has come up with a writ petition in W.P.(MD)No. 12436 of 2012, wherein the organization is aggrieved against that portion of the order wherein the rate of damages is against the amended Act. The contention of the EPF organization is that the 14B damages was reduced to 15%, since maximum the rate of damages leviable was 37% and the minimum payable was 17% prevailing then, as per the Notification No. GSR 521 with effect from 01.09.1991. The present rate of damages at maximum of 25% and minimum of 5% was imposed with effect from 26.09.2008 as per the notification GSR (E), dated 26.09.2008. Whereas, the Tribunal has referred to the new rates over the belated remittance and the rates fixed by the Tribunal are not sustainable. Hence, the EPF organization has come with the writ petition in W.P.(MD)No.12436 of 2012.

4. Heard Mr.K.Murali Sankar, learned Counsel appearing for the EPF organization and Mr.C.Karthikeyan, learned Counsel appearing for the mill establishment in both the writ petitions and perused the records placed before this Court.

5. The learned Counsel appearing for the establishment submitted that there are two units. Because of the financial loss subsequently one unit was closed. There are so many factors that the factory could not run with sufficient employees and the unit was struggling to pay salary itself. Therefore, the learned Counsel for the establishment submitted that the damages levied is on a higher side and prayed to interfere with the damages. The learned Counsel for the establishment also submitted that for the subsequent period, the Tribunal has levied only lessor damages for the same unit and prayed to consider for levying lesser damages.

6. The Learned Counsel appearing for EPF organization submitted the details of belated remittance for the period from 03/1998 until 2001. For some

months the delay is below 2 months i.e. below 10 days, for some months it is below 4 months, for some months below 6 months, for some months it is above 6 months. The rate leviable is 5%, 10%, 15% and 25% as per the amendment section. The rate leviable is 17%, 22%, 27% and 37% as per earlier provisions with effect from 01.09.1991. The EPF authorities had levied appropriate damages for the said period and relied on the rates prescribed for the periods from 1991 to 2008. The Learned Counsel further submitted that the appropriate rate of damages was levied by the EPF organization and hence prayed to levy the rates applicable during that period of time.

7. On perusal of the provisions of the Act and the Scheme it is seen that the provisions were introduced on various periods.

> ***Section 14-B. Power to recover damages*** *– This provision was enacted in 1953, in order to impose some punishment for contravention of the provisions of the Act. The authorities may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the scheme. The Central Board may reduce or waive the damages levied under this section if the unit is declared sick under BIFR.*
>
> ***Sections 7-Q. Interest payable by the employer*** *– This provision was enacted along with sections 7-B to 7-Q with effect from*

01.07.1997 and the section 7-Q was introduced to levy interest. The interest shall be levied at 12% per annum

> ***Para 32-A. Recovery of damages for default in payment of any contribution*** *– was enacted under the scheme on 16.08.1991 with effect from 01.09.1991. From 1991 until 1997 the rate of damages was 17%, 22%, 27% and 37%. However, after levy of interest under 7Q from 1997 the rate was changed as 5%, 10%, 15% and 25%. This would be evident from the contents of the Circular which was issued by the Commissioner.*

8. The Commissioner's Circular is extracted hereunder:

1) "Levy of damages for belated payments.

*"**With the amendment to the Act** providing for payment of simple interest at 12% per annum **(section 7Q)** payable from the date of amount has become due till the date it is actually paid, the **Central Board of Trustees has approved the following revised rates of damages** with condition that the position with regard to the incidence of default following the revision of the rates of damages would be analysed after six months from the date of new rates come into force:*

S. No.	*Period of delay*	*Interest under section 7Q*	*Revised rate of Damages*	*Total*
1	*2 months or less*	*12*	*5*	*17*
2	*Over 2 months but less than 4 months*	*12*	*10*	*22*
3	*Over 4 months but less than 6 months*	*12*	*15*	*27*
4	*Over 6 months*	*12*	*25*	*37*

2.The levy of damages at the above rates may be subject to the following conditions:

> a. *the grace period of five days allowed for payment of the dues shall continue to apply. However, any payment made by the employer after the expiry of the due date (which includes the grace period) for whatever reason including bank holiday, shall attract the damages.*
>
> b. *The Regional Provident Fund Commissioners will have to consider judicially all the relevant facts and circumstances of each case of default and pass formal speaking order for levy of damages keeping in view of the rates of damages specified in the scheme. However, where it is decided to impose damages at a lower rate, detailed reasons will have to be given in the speaking order itself for imposing damages at a lower rate.*

*3.**The revised rates are applicable in respect of all defaults arising on and after 01.06.1990**. All other procedure on the subject enunciated in earlier letter particularly those relating to affording a reasonable opportunity to the employees being heard before final order are passed, restricting the number of adjournment to not more than three, avoiding long adjournments, passing a reasoned speaking order and delivering the order on the date on which the hearing is concluded remain unchanged and these instructions should be scrupulously followed.*

2) Procedure for levy of damages
The following guidelines are laid down for levying penal charges under Section 14-B of the Act-
(a) Not printed
(b) Before issuing orders"

9. Based on the Act, Scheme and the Commissioners Circular the period can be classified as under:

Periods	Rate of damages	Rate of interest
From 1991 to 1997	17%, 22%, 27% and 37%	Nil (Rate of interest was enacted from 1997 onwards)
From 1997 to 2008	5%, 10%, 15% and 25%	12% as per the Commissioners Circular
From 2008 to till today	5%, 10%, 15% and 25%	As per the amended section in the Act and the Scheme

From the aforesaid tabulation it would be evident that the intention of the Legislature is to impose the interest at 12% which is standard. But the rate of damages is variable. The rate of interest is imposed from 1997 onwards based on the amendment and the new section 7Q was enacted. After the new section 7Q the Commissioner has issued the Circular, wherein it is clearly stated that based on the amendment in the Act wherein the introduction of Section 7Q, the Central Board of Trustees has approved the revised rate of damages.

10. But the Learned Counsel appearing for the EPF Organisation submitted

that from 1991 to 2008 the amended scheme prescribes only 17%, 22%, 27% and 37% and the same ought to be applied and further submitted that the Circular was issued in the year 1990 and the same cannot have effect once the Act and Scheme is amended in the year 1991. However, the Circular has taken note of the amendment of section 7Q which was amended in the year 1997. Hence this Court is rejecting the argument of the EPF Organisation that the 17%, 22%, 27% and 37% is applicable from 1991 to 2008. As stated supra in tabulation in paragraph 9 the rates 17%, 22%, 27% and 37% is applicable for the period from 1991 to 1997. Then 5%, 10%, 15% and 25% from 1997 to 2008 as per Circular and then 5%, 10%, 15% and 25% from 2008 to till date as per amendment.

11. This Court is of the considered opinion that the Legislature in its wisdom has clearly laid down that the interest plus damages should not cross 17%, 22%, 27% and 37%. If the EPF organization's plea is accepted then the rate of interest plus damages would go 29%, 34%, 39% and 49% for the period from 1991 to 2008, which can never be accepted. This would be evident from the Circular of the Commissioner, wherein it states that the **revised rates are**

applicable in respect of all defaults arising on and after 01.06.1990. Therefore at the cost of repetition this Court is of the considered opinion that the rates applicable for the various period is as stated in the tabulation below:

Periods	Rate of damages	Rate of interest
From 1991 to 1997	17%, 22%, 27% and 37%	Nil (Rate of interest was enacted from 1997 onwards)
From 1997 to 2008	5%, 10%, 15% and 25%	12% as per the Commissioners Circular
From 2008 to till today	5%, 10%, 15% and 25%	As per the amended section in the Act and the Scheme

12. In the present case the period of default is from 3/98 to 12/98 and 6,7,8,11/2000 to 2/2001. By applying the table stated supra the damages applicable is only 5%, 10%, 15% and 25%. The Tribunal has standardly fixed the rate as 15% which is erroneous, since the period of delay varies for each month. For certain period, the delay is below 60 days. In such circumstances, the

company is liable to pay only 5%. Since the company is facing financial loss, the petitioner establishment is entitled for lesser rate of damages and wavier for damages for certain period. It is pertinent to state that the Act itself prescribes lesser rate or wavier of damages. Even the Circular also states that if appropriate reasons are shown less rate of damages or wavier of damages shall be considered. The Learned Counsel for the EPF Organization submitted that such power is granted to the Board only. This plea is against their own circular, which states that if the establishment shows sufficient cause for delay, then the less rate of damages or wavier of damages shall be considered. There are several judgments where the Hon'ble High Court has reduced the rate of damages after considering the financial status of the company. Admittedly, in the present case, the company had faced financial recession and hence, the rate ought to be reduced. Therefore, this Court is of the considered opinion that the percentage shall be fixed as follows:

Wage month	Date of presentation	Delay days	Rate applicable	Reduced rate at percentage
3/1998	07.01.1999	261	25	10
4/1998	07.01.1999	237	25	10
5/1998	07.01.1999	206	25	10
6/1998	07.01.1999	176	15	10
7/1998	07.01.1999	145	15	10

8/1998	07.01.1999	114	10	5
9/1998	07.01.1999	84	10	5
10/1998	07.01.1999	53	5	Waived
11/1998	07.01.1999	23	5	Waived
12/1998	22.01.1999	7	5	Waived
6/2000	21.07.2000	6	5	Waived
7/2000	23.08.2000	8	5	Waived
8/2000	13.10.2000	28	5	Waived
11/2000	10.03.2001	85	10	5
12/2000	27.03.2001	71	10	5
01/2001	25.05.2001	99	10	5
2/2001	15.06.2001	92	10	5

13.With the above said observation, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **20.09.2022**
Internet : Yes

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S.SRIMATHY, J

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