BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9911 of 2012
and
M.P.(MD).No.1 of 2012

Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Bhavishys Nidhi Bhavan,
NGO 'B' Colony,
Tirunelveli – 627 007. ... Petitioner

Vs.

1.The Presiding Officer,
The Employees Provident Funds,
Appellate Tribunal, New Delhi.

2.The Sibaflor Natural Decorations Private Limited,
(Formaly known as M/s.W Hogewoning Dried
Flowers Industries Private Limited) 2/101-2/108,
Ettayapuram Road,
A.Kumarapuram, Melamaruthur,
Kurukuchalai, Tuticorin – 628 722,
Represented by its Director. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent dated 03.02.2012 in ATA No. 270(13)2009 and quash the same and direct the second respondent to pay the sum of Rs.2,33,412/- as per the order no.TN/TNY/2009/Circle 22/2009 dated 12.03.2009.

For Petitioner : Mr.K.Murali Sankar

For R-1 : Tribunal

For R-2 : Mr.K.Hema Karthikeyan

ORDER

This Writ Petition is filed challenging the impugned order dated 03.02.2012 and direct the second respondent to pay the sum of Rs.2,33,412/- as per the order no.TN/TNY/2009/Circle 22/2009 dated 12.03.2009.

2. The second respondent is an establishment covered under the Employees Provident Funds with effect from 22.09.1997 under the code number TN/41151. The second respondent belatedly remitted the Employees Provident Fund during the period from 9/1997 to 9/1999 and proceedings were initiated under Section 14B and 7Q and the respondents paid the same. Subsequently, during the period from 4/2000 to 2/2008, again the second respondent remitted belatedly. Hence, the EFP Organization initiated action under Section 14B of the Act to levy damages. For notice dated 11.02.2009, the establishment appeared before the authority on 12.03.2009, but did not raise any dispute regarding the statement of belated remittance. But, contended that due to financial constraints, they could not pay in time and requested for waiver of damages. After considering the facts,

the petitioner/EPF organization levied damages of Rs.2,33,412/- for the said period and also interest was levied amounting to Rs.1,32,702/- vide order dated 12.03.2009. Since the establishment failed to remit the damages and interest, order under Section 8F of the Act were issued to the bankers of the establishment. Hence, the second respondent establishment challenged the order dated 27.04.2009 passed under Section 8F of the Act in W.P.(MD). No.4554 of 2009 and the same was disposed on 10.06.2009 with a direction to the second respondent to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) within a period of eight weeks and directed to number the statutory appeal filed before the Appellate Tribunal. The second respondent deposited a sum of Rs.1,00,000/- on 17.08.2009 and interest of Rs.1,32,702/- on 27.06.2009 and filed an appeal before the Tribunal and the Tribunal vide order dated 03.02.2012 disposed of the appeal filed by the establishment with observation that the EPF organization conducted enquiry under Section 14B of the Act but without following the law in its correct perspective and there is no enquiry or finding of fact that the establishment has willfully and deliberately withheld the EPF contribution, hence reduced the damages up to 10% per annum on the arrears of the contribution. The contention of the EPF organization is that the levy of damages has been done in accordance with the provisions under Section 14B of the Act. The EPF organization contended the enquiry authority need not go into the reasons for delay in remittance of PF contribution and relied on the judgment of the Hon'ble Supreme Court in the case of *Hindustan Times Limited Vs Union of India* and others, reported in AIR 1998 SC 688 wherein, the financial plea in waving the damages was rejected. Financial constraints are not justifiable ground for employer to escape liability of damages as held by the *Hon'ble High Court of Orissa (Division Bench) in Esskay Machinery Private Limited Vs RPFC, 1999 I LLJ 1001 : 1998 IV LLN 411 : 1998 LIC 2258 : 1998 LLR 925 (Ori.DB). The Hon'ble High Court of Gujarat (Division Bench) in Arvind Mills Limited Vs Gandhi R.M., 1982 LIC 344 (Guj.DB)*. Hence, the claim of the respondent that the Tribunal has passed an order erroneously which is against the settled proposition of law. Hence, the petitioner filed this Writ Petition challenging the order passed by the Tribunal.

3. The respondents submitted that due to abnormal rise in the raw materials, power tariff, plant and machineries and other spare parts and substantial increase in wages of workman, there was heavy loss in their institutions. Coupled with the above facts, there was unprecedent depression prevailing in the industry. Hence the financial position of the respondents has become very precarious. The respondent failed to consider the case of the second respondent sympathetically. The EPF organization has not followed their own circular dated 29.05.2000 and Gazette of India dated 26.09.2008 in which the rate of interest fixed for the

belated remedies is on the lower rate. For these reasons, the learned counsel appearing for the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.K.Murali Sankar, learned counsel for the petitioner and Mr.K.Hema Karthikeyan, learned counsel for the second respondent and perused the records.

5. On perusing the order passed by the Tribunal, it is seen that Tribunal has followed the judgment rendered in the case of *M/s. Hindustan Steel Limited Vs The State of Orissa* reported *in AIR 1970 S.C. 253*, wherein, the Hon'ble Supreme Court has held that even if the minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty where there is a technical or venial breach or where the breach flows from bono fide belief that the offender is not liable to act in the manner prescribed by the statue deliberate dishonest on the part of the respondents. The learned counsel appearing for the EPF submitted that the said law is no longer applicable, since damages has only civil consequences.

6. The next point that was canvassed by the EPF organization is that the Tribunal has no power to reduce the rate that is fixed by the statute. The period of delay and the rates are fixed as under:

Period of default	***Rate of damages (% of arrears per annum)***
(a) Less than two months	*05*
(b) Two months and above but less than four months	*10*
(c) Four months and above but less than six months	*15*
(d) Six months and above	*25*

The authorities are empowered to fix the rate of damages as given in the statute. However, the learned counsel appearing for the respondents submitted the power to impose damages under Section 14 B is the judicial power. The Section 14B does not mandate that order for damages must follow in every default. The Provident Fund authority has discretionary power to impose the damages and the ceiling has been fixed that the damages shall not exceed the amount of arrears. When there is a discretionary power, the authorities are bound to exercise the discretionary power. The maximum damages that were imposed for the period prior to 2008 is 37% subsequently the same was reduced as 25%. Since the establishment is facing financial crisis coupled with the fact that the establishment had paid the liability along with the interest, the establishment are seeking only for a waiver or reduction of rate of damages. By considering the plea of the respondents, the Tribunal has reduced the rate of interest. However, the Tribunal has held that there is no deliberate withholding of PF contribution and the EPF organization had not recorded the finding that there was willful withholding of the PF contribution and reduced to 10%. This reason is assailed by the EPF organization in this writ petition.

7. As rightly pointed out, the intention, willfully withholding cannot be entertained as reasons for reducing the damages. However, the establishment has stated that there were abnormal rise in the raw materials, power tariff, plant and machineries and other spare parts and substantial increase in wages of workman, there was heavy loss in their institutions and hence the establishment could not pay from 9/1997 to 9/1999 and 4/2000 to 2/2008. In the appeal grounds the establishment had stated that the continued crisis prevailed in the industry, the unit had become utterly un-viable, it faced permanent closure. In order to keep the unit open, it was decided to buy the raw materials in credit and by deferring the statutory payment. Even though the Tribunal has reduced the rate of damages for different reasons, this Court for the reason of financial constraint as narrated above is inclined to confirm the order passed by the Tribunal.

8. Therefore the order passed by the Tribunal is confirmed and the second respondent is liable to pay only 10% damages for the said period of belated payment.

9. Hence, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

12.10.2022

Index : Yes / No
Internet : Yes

Nsr

To

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The Employees Provident Funds,
Appellate Tribunal, New Delhi.

2.The Director.
The Sibaflor Natural Decorations Private Limited,
(Formaly known as M/s.W Hogewoning Dried
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S.SRIMATHY, J

Nsr

Order made in
W.P.(MD)No.9911 of 2012

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