# BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Judgment Reserved On | Judgment Pronounced On |
|---|---|
| **20.09.2022** | **11.10.2022** |

CORAM

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

**W.P.(MD)No. 20610 of 2014**
**and**
**W.M.P(MD)No. 4992 of 2022**

M/s.Selvarenuka Matches,
through its Proprietrix,
3/411, O.Mettupatti (Via),
Sattur – 626 203,
Virudhunagar District,
Tamil Nadu State. ... Petitioner

vs.

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

2. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Regional Office,
   Lady Doak College Road, Chokkikulam,
   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 1054(13) / 2014 and to quash the portion of the order, dated 27.10.2014 directing the Petitioner to deposit Rs.10,00,000/-.

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| For Petitioner | : Mr.C.Karthikeyan |
| For R-1 | : Tribunal |
| For R-2 | : Mr.K. Murali Shankar,<br>Standing Counsel |

**ORDER**

This Writ Petition is filed for issuance of a ***Writ of Certiorari,*** to quash the portion of the order, dated 27.10.2014 passed by the 1st Respondent in No.ATA 1054(13)/ 2014 directing the Petitioner to deposit a sum of Rs.10 Lakhs.

2. The brief facts as stated in the affidavit is that the Petitioner is a Proprietorship unit had filed an appeal before the Tribunal under Section7-I of Employees' Provident Fund Act and Miscellaneous Provisions Act, 1952, against the order passed by the 2nd respondent, the Assistant Provident Fund

Commissioner, dated 09.09.2014, claiming damages to the tune of Rs.26,03,703/- along with interest for the period from 03/2007 to 05/2013, under Section 14B of Employees' Provident Fund Act. Along with the main appeal, the petitioner had preferred stay application and waiver application before the 1st respondent. The 1st respondent admitted the appeal for consideration. But, while taking up the Waiver and Stay application, the 1st respondent directed the petitioner to deposit a sum of Rs.10 Lakhs before the 2nd respondent, within a period of four weeks from the date of the order, i.e., dated 27.10.2014. The contention of the petitioner is that the Tribunal has not stated any valid reasons, while passing the impugned order directing the petitioner to deposit the said sum of Rs.10 Lakhs.

3. The petitioner further submitted that the Petitioner establishment is a small match works situated in a village namely O. Mettupatty, near Sattur. In the year 2007, the petitioner had extra orders from the outside, but the production carried out in the Factory could meet the orders for the regular customers only. Hence, the petitioner had made arrangements to produce matches from outside, brought inside the petitioner's factory and only packages were carried out in the factory. The petitioner had a legal advice, stating that in the year 2007 the outside

agencies / outside independent contractors from whom the works were carried out in the outside premises, there is no need to pay ESI and EPF contribution. Upto 2007, the employees' strength was 110 and the same strength continued till 2011.

4. The petitioner further submitted that, on 02.03.2011, a fire accident had occurred in the petitioner's factory and most of the equipment and machineries were burnt out and the petitioner was forced to suspend the production nearly for eight months. Only in the month of December 2012, the petitioner could re-started the production. Due to the said fire accident, the petitioner's factory incurred heavy loss and more or less the entire factory was damaged. Because of this, the petitioner's establishment could not remit the EPF, within the permitted time. The Enforcement Officer directed the petitioner to remit contribution for the outside agency employees and they have to enroll in EPF role. In the meanwhile, after, reopening the factory, the petitioner had closed the outsourcing employment. After renovation of the factory, the petitioner expanded the factory premises and nearly 42-50 people were accommodated inside the factory and the employees strength were increased to 160 to 170

persons. The increased strength were newly recruited employees and all were enrolled under EPF role. Under these circumstances, the payment was paid for the outside sourcing employees from 2007 to 2011.

5. The petitioner further contended that, being a newly renovated factory, the petitioner could not remit the contribution due for outside sourcing agencies/independent agencies and they have remitted the same in installments. From 04/2011 onwards, there was no delay in remittance of EPF contribution. But, from 12/2011 to 05/2013, the number of days delay varies from few days to 30 days only. But, the 2nd respondent claimed damages, under Section 14B of the Employees' Provident Fund Act, for the delay in remittance of contribution, for the period from 03/2007 to 05/2013 through its order, dated 09.09.2014 for a sum of Rs.26,03,703/- along with interest. The petitioner's counsel relied on the judgment passed by this Court in W.P(MD)No.9407 of 2012, reported in ***2013(1) LLJ P.241*** and W.P(MD)No.5906 of 2005 dated 01.10.2007, wherein, the this Court has allowed the petitions and ordered for waiver of pre-deposit for the appeal filed under Section 7(A). The learned counsel appearing for the petitioner contended that under 7(A) pre-deposit was paid and therefore under Section 14-B

the Tribunal ought to have considered for waiving pre-deposit. Since the tribunal has granted interim order with condition, aggrieved over the same, the petitioner has filed this present Writ Petition.

6. The 2nd respondent has filed counter along with vacate stay petition, wherein it is stated that in ***Asian Resurfacing of Road Agency Pvt. Limited Vs. Central Bureau of Investigation,*** the Hon'ble Supreme Court directed that in all pending matters before the High Courts or other Courts relating to Prevention of Corruption Act, or all other Civil or Criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapsed after six months, after six months from March 28, 2018, unless extended by a speaking order. Although the Judgment was rendered in the context of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court has issued directions for all civil and criminal matters in an attempt to reduce the delay in disposing of the matters. Therefore, the Employees Provident Fund organization prayed to vacate the interim direction.

7. Heard Mr.C.Karthikeyan, learned counsel appearing for the petitioner and Mr.K. Murali Shankar, learned Standing Counsel appearing for the 2nd respondent and perused the material documents available on record.

8. The main contention of the petitioner is that the Petitioner establishment had carried small level manufacturing activities, when the petitioner received extra orders the petitioner establishment had procured the products by out sourcing work from the individual units. Under the Employees' Provident Fund Act, if there is any work contract, the same was carried through sourcing, then the same ought to be considered based on the evidence available whether the establishment is liable to pay or the out sourced establishment ought to pay the EPF.

9. In the present case, there is no evidence to show that the Employees' Provident Fund Organization had considered whether the unit had work order, whether the establishment out sourced to carry out the work order etc.

Moreover, the main issue is pending before the tribunal. The issue raised before this Court is that whether pre deposit can be ordered when the levy of damages under Rule 14(B) is challenged.

10. The contention of the petitioner's company is that the pre-deposit provision is applicable only to 7(A) payments alone. It is not applicable to the proceedings under 14(B). Hence it is necessary to refer to the relevant provisions. The ingredients of ***Section 7(A) of the Employees Provident Fund Act,*** is extracted here under:

> *"7-A. Determination of moneys due from employers – (1) The Central Provident Fund Commissioner, any Additional Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner, may by order-*
>
> *(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*
>
> *(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and*

*for any of the aforesaid purposes may conduct such inquiry as he may deem necessary".*

11. The ingredients of ***Section 14(B) of the Employees Provident Fund Act,*** is extracted here under:

*"14-B. Power to recover damages- Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.*

*Provided that-before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:*

*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".*

12. Under Section 7(O) of the Act, there is a specific provision, where, it states that, any appeal is filed against the order passed under section 7(A) of the Act, the establishment is liable to pay pre-deposit of 75%. There is a deliberation omission in the said provision to include 14(B). The object behind this is that the payment under 7(A) is statutory and mandatory and there is no waiver at all. However, under Section 14(B) it is only a deterrent provision and the provision also states that the damages can be imposed based on the days of delay and if the delay is below two months it is 5%, from 2 to 4 months it is 10%, from 4 to 6 months it is 15% and above six months 25%. Since there is range of payment there is a discretionary power granted to the authorities as well as the Tribunal. Moreover, if the establishment is able to prove that delay is due to the loss or the unit has been declared as sick, then there is provision for waiver of

damages. From this, it would evident that damages is a discretionary power and the entire damages may be waived also. In such circumstances, pre deposit is not mandatory. Therefore, this Court is of the considered opinion that the damage is not a mandatory and the challenge of damages under Section 14(B), the tribunal shall consider without pre deposit.

13. In the present case, the petitioner establishment had also submitted that the unit was burnt out due to fire accident, some orders were out sourced. Taking all these factors into consideration, the pre deposit imposed by the Tribunal is not warranted. Moreover the Tribunal has not stated any reasons for imposing the pre deposit and has passed an order mechanically. Hence, the impugned order dated 27.10.2014 directing the petitioner to deposit a sum of Rs.10 Lakhs, passed by the 1st Respondent in No.ATA 1054(13)/ 2014 is hereby quashed. The 1st respondent/Tribunal is directed to hear the main case without pre deposit. With this direction, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is also closed.

Index : Yes / No

Internet : Yes

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**11.10.2022**

To

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

**<u>S.SRIMATHY, J</u>**

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***<u>Order made in</u>***
**<u>W.P.(MD)No. 20610 of 2014</u>**

**11.10.2022**