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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **28.06.2023**

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No. 10629 of 2013

And

M.P.No. 2 of 2013

The Assistant Provident Fund
Commissioner
Employees Provident Funds Organisation
No.37, Royapettah High Road,
Royapettah, Chennai – 600 014.

... Petitioner

..Vs..

1. Deccan Enterprises
No.4, 7th Avenue
Harrington Road,
Chennai – 600 031.
2. Employees Provident Fund Appellate
Tribunal
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi – 110 092.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records relating to the proceedings of the second respondent dated 15.06.2011 in Ref.No.ATA No. 620(13) of 2007, and quash the order passed therein.



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For Petitioner :: Mr. T.R.Sundaram

For 1st Respondent :: Mr. T.D.Selvanbabu

ORDER

The petitioner is the Assistant Provident Fund Commissioner. He challenges the order passed by the Employees Provident Fund Appellate, Tribunal at New Delhi in ATA No. 620 (13) of 2007.

2. The first respondent is an establishment indulging in manufacturing of readymade garments. The proceedings were initiated under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act and penalty and interest were levied on it.

3. The case of the first respondent is that levying of penalty and interest across the board without taking into consideration the special circumstances that was involved in this case is unfair. Before the Tribunal, this was the only point that was urged. The Tribunal took into consideration that the first respondent was regularly paying its dues till it faced financial issues. It referred to a Judgment of this Court in ***[M/s. Shanti Garments Vs. RPFC] 2003 Vo.1 CLR 228***, wherein this Court had held that the damages awarded under the



Employees' Provident Funds and Miscellaneous Provisions Act must be compensatory rather than penal in nature. This position of law has also been accepted by the recent Judgment of this Court in W.P.No. 6767 of 2015 dated 01.06.2023.

4. I asked Mr.T.R.Sundaram, learned counsel for the petitioner that whether there are any distinguishable circumstances from the position that has been adopted by this Court from the year 2003 onwards exist. He was unable to point out such circumstances.

5. The learned counsel for the petitioner would invite my attention to the case of ***Horticulture Experiment Station Gonikoppal, Coorg Vs. the Regional Provident Fund Organisation in Civil Appeal No. 2136 of 2012*** in order to substantiate the statement that *mensrea* is not required for the purpose of damages under Section 14-B. Here is a case that demands whether damages and penalty are penal in nature or compensatory. That position of law is not affected by the said Judgment. Hence, the said Judgment does not apply to the facts of this case.

6. The precedent, having held the field for more than 20



years, I have to follow the same. Consequently, the order of the Tribunal is confirmed. The petitioner shall re-work the liability of penalty and damages in terms of the order of the Tribunal. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

7. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.06.2023

vsg

Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

To

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V.LAKSHMINARAYANAN, J.,

vsg



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