



WP.No.24344 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 06.10.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.24344 of 2011
and MP.Nos.1 and 2 of 2011

M/s.Consue Apperels,
(formerly S.P.International)
Rep. by its Proprietor,
S.P.Subramanian
No.6 (Old No.29), Rajasekaran Road,
Off. Dr.R.K.Salai,
Mylapore, Chennai- 600 004.

...Petitioner

Vs.

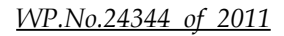
1. Employees Provident Funds Appellate Tribunal
Rep. by its Registrar, Ministry of Labour
Government of India,
Scope Miniar, Core-II, 4th Floor,
Lakshmi Nagar, New Delhi- 110 092.

2. The Regional Provident Fund Commissioner-II,
Employees Provident Fund Organization,
37, Royapettah High Road, Chennai- 600 014.

3. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
37, Royapettah High Road, Chennai- 600 014.

...Respondents

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2. The petitioner is a partnership firm and was engaged in the business of manufacturing garments, dress materials etc. for export. The petitioner was regularly remitting the contribution towards provident fund for the employees since 1990. Due to financial issues, the petitioner defaulted in making the contribution from the year 1994 onwards. Therefore, the EPF levied the damages and interest for the default period. The petitioner challenged the order passed by the 2nd respondent before the appellate tribunal.

3. The contention of the petitioner before the appellate tribunal was that, the authority had no jurisdiction to levy the damages and interest without taking into account the facts and circumstances of the case. According to the petitioner, the default was not intentional but due to financial problems faced by it. The Appellate Authority rejected the contention of the petitioner stating that financial problems were part of the industrial establishments and so the same was not a sufficient ground to justify the default in payment of contribution. The appellate authority



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therefore confirmed the order of the second respondent.

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4. Aggrieved by the order of the appellate authority, Petitioner has filed the present writ petition.

5. When the matter was taken up for hearing, the learned counsel for the petitioner submitted that the impugned order was unsustainable, in view of the fact, that the appellate authority had failed to note that the delay in paying the contribution was not wilful or intentional, but due to the financial problems faced by them. The learned counsel submitted that unless and until Mens rea or intention of the parties to commit the violation is proved, the damages under Section 14B cannot be enforced.

6. The learned counsel for the respondents on the other hand submitted that the aforesaid contention of the learned counsel for the petitioner is covered by the Judgment of the Hon'ble Supreme Court in the case of *Horticulture Experiment Station Gonikoppal, Coorg vs. The Regional*



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Provident Fund Organization reported in CDJ 2022 SC 223. The learned

counsel relying on para 17 of the Judgment submitted that there are no merits in the writ petition and same deserves to be dismissed

7. It is an admitted fact that the petitioner's firm committed default in remitting the EPF contribution and therefore the 2nd respondent had imposed the damages under Section 14B of the Act. It is further seen that the appellate authority rejected the contention of the petitioner, that unless and until Mens rea or intention to violate was established damages could not be imposed. Therefore the only question to be decided is whether the order passed by the appellate authority is sustainable or not.

8. As rightly contended by the learned counsel for the respondents the issue is squarely covered by the Judgement of the Hon'ble Supreme Court in the case of *Horticulture Experiment Station Gonikoppal, Coorg vs. The Regional Provident Fund Organization* reported in CDJ 2022 SC 224 para 17 of the Judgment reads as follows:



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*“17. Taking note of three-Judge Bench judgment of this Court in **Union of India and others v. Dharmendra Textile Processors and others** (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities.”*

9. In the light of the law laid down by the Hon'ble Supreme Court, I find no merits in the present writ petition and the same is dismissed.

10. It is submitted by the learned counsel for the petitioner that 25% of the demand amount was already paid in pursuance of the interim order passed by this Court in M.P.No.2 of 2011, dated 21.10.2011. The learned counsel seeks time to deposit the balance amount. In view of the submissions made by the learned counsel for the petitioner, eight (8) weeks time is granted from the date of receipt of copy of this order to deposit the balance demand amount, failing which the respondents shall be at liberty



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to recover the same in accordance with law.

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In the result, writ petition is dismissed. There shall be no order as to costs. Consequentially connected Miscellaneous Petitions are closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To
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N.MALA, J.

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