



W.P.No.6767 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	03.04.2023
PRONOUNCED ON	:	01.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.6767 of 2015

The Central Board of Trustees,
EPF Organisation, Rep. By
The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
No.R-40A, TNEB Office,
Mugappair, Chennai 600 056

... Petitioner

Vs.

1. Kattima Exports (P) Limited,
No.6/1,Plot No.106, Suriya Prakasam Street,
Kuppusamy Nagar,
Saneer Kuppam, Chennai 600 056

2. The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi 110 092

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the second respondent in ref No.ATA No.293(13) 2012, and quash the order passed therein.

For Petitioner : Mr.M.S.Viswanathan



W.P.No.6767 of 2015

For R-1

:

Mr.G.P.Sivakumar

WEB COPY

* R2 Court

ORDER

Challenging the order of the second respondent-EPF Appellate Tribunal, in Ref No.ATA No.293(13) 2012, dated 29.11.2013 allowing the appeal filed by the respondent herein/employer, the aggrieved appellant-EPFO has preferred the present writ petition.

2. According to the learned counsel for the petitioner-EPFO, the first respondent herein is an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act'). The respondent establishment has failed to pay the statutory Provident Fund dues and other allied dues within the due dates. As a result of which, an inquiry under section 14B of the Act was initiated in order to assess the damages for the period from 10/2001 to 05/2009. Later a notice was issued vide No.TN/SRO/AMB/66679/PDC/2011 dated 28.11.2011 to the first respondent to appear for the inquiry on 19.12.2011.

3. The first respondent establishment produced a representation dated



W.P.No.6767 of 2015

10.12.2011, requesting one month time to produce the necessary details and the case was adjourned to 18.01.2012. After providing subsequent adjournments, the inquiry was posted on 17.02.2012. While so, on 17.02.2012, one K.S.Madhusuthanan, representative of the establishment appeared for the enquiry and requested to waive the damages and interest. The EPFO pointed out that as per the scheme provisions, the levy of damages and interest cannot be waived.

4. Mr.M.S.Viswanathan, learned counsel for the petitioner-EPFO would contend that the damages under Section 14B of the Act was Rs.3,36,729/- and the interest for belated remittances under Section 7Q of the Act for the period from 10/2001 to 05/2009 was Rs.1,09,442/- totalling Rs.4,46,171/-was levied upon the first respondent-Establishment towards damages and interest. Challenging the order of levy of damages, the first respondent had approached the second respondent-Appellate Tribunal, by way of filing an appeal under Section 7(1) of the Act.



W.P.No.6767 of 2015

5. After analysing the appeal grounds, the Appellate Tribunal, vide order dated 29.11.2013 held that there was no willful default committed by the appellant/ first respondent herein in remitting the P.F. dues and directed the EPFO to consider only the compensatory clause to be invoked. The Tribunal, also restricted the damages leviable at 5% of the actual amount of damages levied under the impugned order. Aggrieved against the said order, the petitioner has preferred the present writ petition.

6. The learned counsel for the petitioner-EPFO relied upon the judgment of the Hon'ble Supreme Court held in Civil Appeal Nos.2136 of 2012, in Horticulture Experiment Station, vs. the Regional Provident Fund Organization, wherein it has been held that once the employer has failed to deposit the contribution of EPF or committed default as mandated under the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952, having failed to do so after determination under Section 7A by the competent Authority, levy of damages is a sine qua non and upheld the order of recovery of damages in the proceedings initiated under Section 14B of the Act. The learned counsel thus supported the Original authority order dated



W.P.No.6767 of 2015

23.02.2012.

WEB COPY

7. On the other hand, the learned counsel for the first respondent-Establishment would submit that the Tribunal has rightly considered the plight of the first respondent and has remanded the matter back to the petitioner directing re-assessment of the liability at 5% in ATA No.292(13)2012, dated 23.11.2013 and therefore, the same needs no interference.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. This Court, after perusing the judgment of the Tribunal is of the view that the learned Judge has elaborately analysed the judgments and various orders passed by the Hon'ble Supreme Court as well as other High Courts and has come to the conclusion that there was no willful default committed by the appellant-Establishment in remitting the PF dues and therefore, held that the penal charges should be more or less compensatory in nature.



W.P.No.6767 of 2015

WEB COPY

10. The learned Judge,Tribunal, also found that the petitioner herein has failed to prove regarding how the respondent establishment has willfully committed default in remitting the PF Dues and therefore, even if the penal provisions of damages has to be included, it is to be considered only under compensatory clause. The learned Judge has elaborately discussed the above reasons and circumstances in which the default in remittance of PF Dues occurred and accordingly, restricted the damages to 5% of the actual amount levied under the impugned order.

11. In the considered view of this court, the order passed by the Appellate Tribunal, is a well considered order and therefore interference is not necessary. Accordingly, the writ petition stands dismissed.

01.06.2023

Index	:	Yes/No
Speaking Order	:	Yes/No
Neutral Citation	:	Yes/No



W.P.No.6767 of 2015

WEB COPY

sts

To:

The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi 110 092



WEB COPY



W.P.No.6767 of 2015

J.NISHA BANU, J.,

sts

Order made in
W.P.No.6767 of 2015

Dated:
01.06.2023