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W.P.No.19421 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2023

DELIVERED ON : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19421 of 2014
and M.P.No.1 of 2014

M/s L.G.Balakrishnan & Bros. Limited,
(wrongly mentioned as L.G.Equipments)
Annur Plant,
represented by P.Prabakaran,
Deputy Managing Director,
Ganesapuram,
Kattampatti (PO),
Coimbatore-641 107.

... Petitioner

-Vs-

The Regional Provident Fund Commissioner-II,
Employee's Provident Fund Organisation,
Dr.Balasundaram Road,
Coimbatore-641018.

... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent in proceedings No.TN/R.O/CBE/PDC/CC15/3818-B/7Q proceedings/2014 and quash its order dated 14.07.2014.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondent : Mr.C.Kulanthaivel, Senior Counsel



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ORDER

This Writ Petition has been filed challenging the order passed by the respondent in proceedings No.TN/R.O/CBE/PDC/CC15/3818-B/7Q proceedings/2014 dated 14.07.2014, thereby directed the petitioner to pay interest under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to the tune of Rs.29,45,213/-.

2. The petitioner is being covered by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after called as 'EPF and MP Act'). The petitioner has been paying contribution in respect of its employees to the respondent. While being so, the petitioner was directed to pay additional contribution from the month of April 2005, by its notice dated 20.09.2006. After litigation, the respondent held that the petitioner was liable to pay additional contribution in respect of stipend and allowance at Rs.51,56,441/- for a period from December 2004 to May 2012. It was paid by the petitioner between October 2012 and February 2013. The respondent claimed damages including interest from the employers ranging from 17% to 37% per annum. With effect from 26.06.2008, Section 7Q of the EPF and MP Act was introduced by which interest was levied at 12% per annum towards belated payment of contribution. Therefore, from 26.06.2008, the damage was



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proportionately reduced by 12% namely ranging from 5% to 25% per annum.

The respondent claimed damages at the old rate which included interest upto 25.08.2008 and a new rate without interest from 26.08.2008 claimed at Rs.44,95,759/-. It was contested by the petitioner on merits. Simultaneously, a notice dated 08.01.2014, was served on the petitioner claiming interest for belated payment from December 2004 to May 2012 at Rs.29,45,213/-.

3. The petitioner replied by the reply notice dated 13.02.2014 raising two grounds that (i) for the period December 2004 to August 2008 interest could not be claimed as it was already covered in the claim for damages and (ii) in respect of period from September 2008 to May 2012, the interest was payable only at Rs.6,80,886/-. However, the respondent passed an order claiming interest at Rs.29,45,213/- under Section 7Q of EPF and MP Act.

4. Mr.S.Ravindran, the learned Senior Counsel appearing for the petitioner submitted that prior to the introduction, separate provision of levy of interest on the delayed payment of PF contribution, Section 14B of the EPF and MP Act provided for levy of damages including interest. This was implemented in terms of Para 32A of EPF Scheme by providing a table levying damages at the rate of 17%, 22%, 27% and 37% per annum depending upon the period of



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default in payment of contribution. The provisions under Section 7Q of EPF and MP Act was introduced in the year 1988 providing for interest at the rate of 12% per annum. However, this provision was made effective only from 01.07.1997. Therefore, the percentage of damages should be proportionately reduced at 5%, 10%, 15% and 25%. However, the respondent claimed damages at the rate of 17%, 22%, 27% and 37%, thereby claiming interest twice, under Section 14B and another under Section 7Q of EPF and MP Act.

5. He further submitted that Para 32A of EPF Scheme was corrected and levy of damages was fixed at 5%, 10%, 15% and 25% effectively from 01.10.2008. However, the respondent imposed damages as per the old table as 17%, 22%, 27% and 37% per annum and also now claiming interest at 12% per annum for the period from December 2004 to May 2012. Therefore, the period from August 2000 to September 2008, the petitioner is not liable to pay any interest. If at all any interest payable by the petitioner, it is only for the period from October 2008 to May 2012.

6. He further submitted that similar issue was dealt by the Hon'ble Full bench of Delhi High Court reported in **2012 (132) DRJ 753 (FB)** in the case of ***Roma Henny Security Services Pvt.Ltd Vs Central Board of Trustees, EPF***



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Organization, wherein it was held that the damages under Section 14B of the EPF and MP Act were inclusive of interest chargeable under Section 7Q of EPF and MP Act. Therefore, the respondent had no right to charge the interest under Section 7Q of EPF and MP Act additionally, when it already stood payable in the order passed under Section 14B of EPF and MP Act. It was challenged by the *Central Board of Trustees* before the Hon'ble Supreme Court of India in *Civil Appeal No.6592 of 2014* in the case of *Central Board of Trustees Vs Roma Henny Security Services Pvt.Ltd* dated 27.02.2019, wherein the Hon'ble Supreme Court of India set aside the Judgment of the Hon'ble Full Bench of the Delhi High Court and remitted the case to the Delhi High Court to consider the effect of Clause 32-A and also consider various questions afresh and decide the case in accordance with law. It was further observed that the circular dated 29.05.1990 has also been brought to its notice which provides that interest component has to be separated than the damages. Mainly the Judgment of the Hon'ble Full Bench of Delhi High Court has not considered the effect of Clause 32A of the EPF Scheme. It does not provide that the interest is included in the penalty specified in the provisions under Clause 32A of the EPF Scheme. It has also not gone into question whether the circular of 1990 issued by the Central Provident Fund Commissioner would hold the field in view of the statutory provisions of Clause 32A of the EPF



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Scheme introduced in the year 1991. Further, it has not taken into consideration whether Clause 32A of the EPF Scheme can be taken to include interest when provision for interest 7Q of the EPF and MP Act was not in force.

7. The learned Senior Counsel for the petitioner also submitted that while imposing interest, the petitioner was not given any opportunity and therefore, prayed to remand the matter to the respondent to consider afresh in respect of interest.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

9. A perusal of the counter filed by the respondent revealed that the petitioner defaulted in the payment of PF contributions and other statutory charges for the period from December 2004 to January 2013. Therefore, the petitioner was issued show cause notice informing the proposed levy of damages for the default committed by them annexing a statement showing the wage, month, due date, amount payable in the respective accounts, the actual date of remittance and the frequency as well as the delay in number of days by notice dated 08.01.2014. In the said notice, the petitioner was also afforded an



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opportunity of personal hearing to represent his case either in person or otherwise on 29.01.2014. On 29.01.2014, one representative of the petitioner had appeared and requested adjournment to 28.02.2014 and accordingly, it was adjourned to 28.02.2014. On 28.02.2014, he submitted a letter for verification of the statement, as no valid reason has been furnished and request cannot be acceded to and the hearing was adjourned to 25.03.2014. Again on 25.03.2014, at the request of the petitioner, hearing was adjourned to 22.05.2014. Again it was adjourned at the request of the petitioner to 17.06.2014. On 17.06.2014, the petitioner submitted that vide letter dated 13.02.2014, the admitted payment was paid belatedly and it was not intentional and requested not to levy damages and interest on the contributions remitted by them. Therefore, the respondent demanded the petitioner to pay for damages and interest, by an order dated 17.06.2014. In fact, the petitioner had challenged the levy of damages before the EPF Tribunal in ATA No.627 of 2014 and it is pending. Therefore, the petitioner was given full opportunity and only thereafter, the order was passed by the respondent.

10. Admittedly, the petitioner had remitted the contribution with delay. Section 14B of EPF and MP Act does not contemplate about the reasons for the delay in remittance of PF contributions of the establishments. The Act cast



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upon a statutory duty on the part of the petitioner to remit the contributions

with other charges within the due dates prescribed under the Act and scheme. If

the petitioner fails, it contemplates levy of damages in the form of penalty.

Therefore, the petitioner had no valid explanations for the default and levy of

damages for the show cause notice issued by the respondent. In fact, the reason

for enacting the provisions under Section 14B of EPF and MP Act is that the

employers may be deterred and thwarted from making defaults in carrying out

statutory obligations to make payments to the provident fund. Insofar as the

interest payable under Section 7Q of the EPF and MP Act is completely

different from levying damages. The damages have been levied at 5% to 25%

on sliding scales for different spells depending on the periodicity of delay as

provided under Para 32A of the scheme of the EPF scheme. Therefore, the

damage levied under Section 14B in consonance with Para 32A of the EPF

scheme is completely different from interest levied under Section 7Q of the

EPF and MP Act. Section 7Q of EPF and MP Act was introduced in the year

1988 and it was made effect from 01.07.1997. Whereas, the petitioner

committed default from the period December 2004 to May 2012. Therefore, the

petitioner was levied damages as 17%, 22%, 27% and 37% per annum.

However, Para 32A of the EPF Scheme came into force with effect from

01.10.2008. Therefore, the respondent ought to have levied tax as per old table



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till September 2008 and as per new table Para 32A of EPF Scheme, from 01.10.2008. Therefore, it was challenged before the EPF Tribunal in ATA No.627 of 2014. The Tribunal admitted the appeal and ordered an interim stay on condition to deposit Rs.20 Lakhs. It was also challenged by the petitioner before this Court in W.P.No.20911 of 2014 and this Court passed an interim stay on condition to deposit Rs.10 Lakhs. Both the writ petition as well the appeal are pending.

11. The respondent has quantified the interest under Section 7Q of EPF and MP Act only based on the statutory provision and duly adhering to its calculation at the simple interest rate at 12% per annum. Further the provisions under Section 7Q was challenged before the Hon'ble High Court of Karnataka in the case of *M/s Khodays Systems limitetd, Bangalore and others Vs Regional P.F.Commissioner (Enforcement) Bangalore and another* reported in *2008(1) LLJ.329 (karn.H.C)*, wherein it has held as follows:-

“ The object of the Act is to protect the interest of the employees and when such contribution is being made and recovered from the salary/wages of the employees, it is the bounden duty on the part of the employer to contribute as well as to pay toward the fund as a member of security for life of the employee as is envisaged under Article 21 of the Constitutional India. The very scheme provided for contribution and any lapse in remitting such contribution from time to time in the usual course should earn interest as when



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such an amount is deposited by way of fund at a future date to be withdrawn by the employee on retirement, necessarily it should earn interest and keeping it idle will be detrimental to interest of the employee.

In such circumstances, the provision under Section 7Q is introduced as a regulatory measure thereby directing the employer to systematically deposit the funds and it cannot be either termed as discriminatory or as against the freedom of trade and profession of the employer much less it does not amount to any such imposition by way of violation of Art.20(1) of the Constitution as it was canvassed by the petitioner. There is also no question of punishing the same person twice by way of imposing penalty. What is contemplated under Section 7Q is only payment of interest on failure to make contribution well in time as in the usual course, such deposit would have necessarily earned interest and that interest would be paid by the concerned department/Government.”

12. Insofar as the interest is concerned from period December 2004 to May 2012, the respondent rightly concluded at Rs.29,45,213/-. It is no way connected with the damages as contemplated under Section 14B of EPF and MP Act and Para 32A of EPF Scheme, since the interest levied under Section 7Q of the EPF and MP Act came into effect from 01.07.1997. Therefore, the petitioner is liable to pay interest as per Section 7Q of the EPF and MP Act. Whatever the interest levied by the respondent cannot be adjusted towards the damages which was levied by the respondent at the rate of 17%, 22%, 27% and 37% per annum. If at all any grievance over the levying of damages for the period December 2008 to May 2012, the petitioner can very well challenge the



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damages levied by the respondent.

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13. As aforesaid, already the petitioner challenged the levy of damages before the Appellate Tribunal in ATA No.627 of 2014 and it is pending. Though the Hon'ble Full Bench of Delhi High Court held that the damages under Section 14B of the Act were inclusive of interest chargeable under Section 7Q of EPF and MP Act, it was set aside by the Hon'ble Supreme Court of India and remitted the matter to the Hon'ble Delhi High Court for fresh disposal to consider the effect of Para 32A of the EPF Scheme. Further it was observed that the circular dated 29.05.1990 was brought into their notice which provides that interest obtained has to be separated than damages.

14. Therefore, this Court finds no infirmity or illegality in the order passed by the respondent and this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

14.07.2023
(1/2)

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The Regional Provident Fund Commissioner-II,
Employee's Provident Fund Organisation,
Dr.Balasundaram Road,
Coimbatore-641018.

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