BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.12457 of 2015
and
M.P(MD).No.1 of 2015

M/s.PE AR KE.Associates Private
Limited,
Aakash Family Club,
P.R.K.Nagar, Paravai,
Madurai-625 402. ... Petitioner

Vs.

1.The Employees Provident Fund
Appellate Tribunal,
C-4 Scope Minor,
Lakshmi Nagar Extension,
New Delhi.

2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
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 relating to the award of the EPF Appellate Tribunal in ATA.No.680(13) 2013, dated 24.09.2013, in so far as deposit of a sum of Rs.2 Lakhs with the 1st respondent and to quash the same.

For Petitioner	: Mr.V.O.S.Kalaiselvam
R1	: Tribunal
For R2	: Mr.S.Anwar Sameen

O R D E R

This writ petition is filed for issuance of a writ of Certiorari, to quash order dated 24.09.2013 passed by the EPF Appellate Tribunal, in so far as deposit of a sum of Rs.2 Lakhs with the 1st respondent.

2. The petitioner is having a small residential home at Paravai Village. Based on the inspection report, the 2nd respondent passed an order covering the employees of the petitioner's establishment retrospectively from April 2005. However, the 2nd respondent also included the unidentified construction workers who worked at the time of inspection. The 2nd respondent passed an order under Section 7-A of the EPF Act. The petitioner remitted the amount in installments. After remittance, the 2nd respondent has passed an order dated 27.05.2013 directing to remit Rs. 5,16,265/- under Section 14-B and Rs.1,87,092/- under Section 7-Q of the

Act. As against which, the petitioner filed an appeal before EPF Appellate Tribunal in ATA No.680(13) 2013 and the Appellate Tribunal, vide order, dated 24.09.2013, granted an order of interim stay and the same was granted with the precondition to deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) and also directed the 2nd respondent not to take any coercive steps. Challenging the same, the present writ petition is filed.

3. The contention of the petitioner is that the coverage is imposed with retrospective effect. In spite of huge loss suffered by the petitioner and though there is no financial viability, the petitioner with great difficulty had remitted the contribution in installments. This itself would prove the financial status of the petitioner and also would indicate the bonafide intention of the petitioner. The petitioner further submitted that the matter of levy of damages under Section 14B of the Act, the authority concerned is duty bound to act in a judicious manner and not in a cursory manner. Moreover, the power to recover the damages is quasi criminal in character. The damages recoverable under Section 14-B of the Act is not a compensatory and the section specifically provided that “such damages may be recovered” and it cannot be imposed mechanically without looking into

the impending circumstances. The further contention is under Section 14-B the mens rea or actus reus ought to be established.

4. The further contention of the petitioner is that the pre-requisite of deposit of 75% of the demanded amount applicable to an order passed under Section 7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of Section 7(1) to the order passed under Section 7A. The liability to deposit arises in the situation strictly contemplated under the provisions of this section. There is nothing in the section so as to extend its application to an order passed under Section 14-B. He further submits that the provision of Section 14-B of the Act is attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in a category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Once the provisions of Section 7-O does not include an appeal against an order under Section 14-B, then it would be in no way permissible to include such an order by implication or otherwise. The Parliament has consciously omitted to include Section 14-B of the Act within the ambit of Section 7-Q of EPF Act. Therefore, the petitioner prays

this Court to direct the first respondent/Appellate Tribunal to hear the appeal without insisting for pre-deposit and pass final orders.

5. The 2nd respondent have filed a counter affidavit and the learned Counsel appearing for the 2nd respondent submitted that the employer is legally duty bound to deduct from the wages of the employee for the period, for which he has worked and earned the wages whether wages are paid or payable. The employer provides matching contribution in terms of the contract of employment and the provision under this Act. Thereafter, the employer is duty bound to remit to the Fund and submit statutory returns within prescribed time limit. As such, any effort by the employer to deny the employees their legitimate dues which they have rightfully entitled or deny contributing in terms of the provision of this Act and schemes framed thereunder, need to be looked upon with suspicion whatsoever the reason is advanced by the employer. After the deposits are made or recovered, the damages are levied depending upon the length of delays under Section 14B as a punitive and deterrent measure and interest under Section 7Q of the Act are levied to compensate the loss of interest incurred to the funds due to the delayed remittance of contribution and consequent delayed investment by

EPFO as per Government pattern, because at the time of final settlement of claims the amount accumulated will be refunded with interest to the members or claimants so earned by way of investment. In the instant case, the petitioner establishment is covered under EPF & MP Act 1952 and allotted code No.TN/57570. On verification of the records, it is noticed that the petitioner had not remitted the Provident Fund and its allied dues for the period from 05/2005 to 02/2011 on various spells within the stipulated time. Hence, the second respondent had initiated inquiry under Section 14B. Sufficient and ample opportunities were offered to the petitioner. After providing sufficient opportunities to the petitioner, the authority levied damages to the tune of Rs.5,16,265/- under Section 14B of the Act and issued proceedings, dated 27.05.2013 and levied interest to the tune of Rs. 1,87,097/- under Section 7Q and issued proceedings, dated 27.05.2013. Various High Courts held that financial problem is not a mitigating factor for making belated remittance of PF contribution. Hence, the second respondent has levied the damages under Section 14B of the Act and issued proceedings to the petitioner. Aggrieved by the proceedings, the petitioner filed an appeal before the first respondent Tribunal in appeal ATA No. 680(13) 2013. The first respondent, vide order, dated 24.09.2013, has admitted the appeal and granted interim stay with a condition to deposit of Rs.2,00,000/- (Rupees Two Lakh only).

6. The reason of financial crisis as stated by the petitioner for making belated remittance of PF contribution is not a valid reason as held in the case of ***M/s. Sky Machinery Ltd., Vs Regional Provident Fund Commissioner*** reported in ***1998 LLR page 925***. The employer to make the contribution only when he pays wages would stultify the project as held in the case of ***EPFO Vs. Birlapur Vidyalaya and others reported in 2007(2) LLN 476.*** As such, the second respondent had levied the damages under Section 14B of the Act, on the belated remittance of PF contributions made by the petitioners for the period in question. In the case of ***Dr.Navnilal K.Shah Vs. Union of India, Department of Law, Mumbai & others reported in 2004 I LLJ 632:200(100),*** the Bombay High Court held as follows:-

> *"...every employer of an establishment to which the Act applies is under statutory obligation to comply with the requirements of the said Act in relation to the contributions to be made to the fund...."*
>
> *".....Any default on the part of an employer in performance of such statutory obligation would invite imposition of damages*

as contemplated under Section 14-B of the said Act..."

Moreover, in several judgments it has been held that there need not be any enquiry regarding the intention of the dealer and a finding of mens rea is not applicable under Section 14-B. Therefore, the respondents submitted that the petitioner is liable to pay damages as levied under section 14B of the Act.

7. Heard Mr.V.O.S.Kalaiselvam the Leaned Counsel appearing for the petitioner and Mr.S.Anwar Sameen, the Learned Counsel appearing for the second respondent and perused the records.

8. On considering rival contentions, this Court is of the considered opinion that the contention of "Mens rea" cannot be entertained, since in several judgments it has been held that "Mens Rea" is not applicable for section 14-B because the damages under section 14-B has only civil consequences. Hence the petitioner's plea of "Mens Rea" is rejected.

9. The learned Counsel for the petitioner submitted that the pre-deposit of 75% of the demanded amount is applicable to an order passed

under Section 7-A and not to other provisions. There is nothing in the section so as to extend its application to an order passed under Section 14-B. Once the provisions of Section 7-O does not include an appeal against an order under Section 14-B, then there is no prescription of payment of pre-deposit. On perusal of Section 7-O of the Act, it is seen that the pre-deposit is prescribed only for an appeal under Section 7-A only. Hence, the claim of the petitioner that for order under Section 14-B pre-deposit has not been prescribed under the Act is absolutely right.

10. The next contention of the petitioner is that during the interregnum period there was steep increase in fixing the damages under Section 14-B which included the damages and interest components and the same is not in consonance with the Act. After hearing the submissions this Court has given its anxious consideration. It is seen that 14-B damages were enacted prior to 7Q. It is seen that based on the Act, Scheme and Commissioner’s Circular the period can be classified as under:

Periods	Rate of damages	Rate of interest
From 1991 to 1997	17%, 22%, 27% and 37%	Nil (Rate of interest was enacted from 1997 onwards)

From 1997 to 2008	5%, 10%, 15% and 25%	12% as per the Commissioners Circular
From 2008 to till today	5%, 10%, 15% and 25%	As per the amended section in the Act and the Scheme

From the aforesaid tabulation it would be evident that the intention of the Legislature is to impose the interest at 12% which is standard. But the rate of damages is variable. The rate of interest is imposed from 1997 onwards based on the amendment with enactment of new section 7Q. After the new section 7Q the Commissioner has issued the Circular, wherein it is clearly stated that based on the amendment in the Act wherein the introduction of Section 7Q, the Central Board of Trustees has approved the revised rate of damages. Hence it is evident that both interest and the damages were separated. Thereafter, payment of interest was made compulsory for belated payment under Section 7-Q, but damages was made discretionary under Section 14-B and hence, there is no necessity for imposing damages in all cases. Therefore, this Court is of the considered opinion that the Section 7-Q prescribes pre-deposit for the order under Section 7-A. But for the appeal under Section 14-B, the Act is not insisting on pre-deposit. And the reason is since the imposition of damages is only discretionary.

11. For the reasons stated supra, this Court is of the considered view that in an appeal against the order passed under section 14-B, the pre-deposit is not necessary while considering to pass interim order. Therefore, the impugned order directing the petitioner to deposit a sum of Rs. 2,00,000/-(Rupees Two Lakh only) is set aside and the Tribunal is directed to hear pending appeal and pass the orders without insisting the petitioners to pre-deposit some amount. The 1st respondent shall consider the appeal ATA No.680(13)2013 and dispose the same within a period of 4 months from the date of receipt of copy of this order.

12. With the above directions, this Writ Petition is allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes

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