BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 13375 of 2018

The Assistant Provident Fund Commissioner,
O/o/.The Regional Provident Fund Commissioner,
Lady Dock College Road,
Chokkikulam,
Madurai District. ... Petitioner

–Vs. -

1. The Presiding Officer,
The Employees Provident Fund Appellate Tribunal,
Scope Minor, Core II,
4th Floor, Lakshmi Nagar District Centre,
Lakshmi Nagar,
New Delhi.

2. M/s.Sri Saravana Spinning Mills Private Limited,
Represented by its Account Manager,
Pithalaippatti,
Dindigul District. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the 1st respondent dated 04.03.2013 in ATA No.135

(13) 2012 and quash the same as illegal, unconstitutional and consequently direct the 2nd respondent to pay the contribution of Rs.5,07,084/- vide proceedings of this petitioner, dated 21.11.2011 in No.TN / RO / MDU / 20497 / RO / CIRCLE 14 / PDC / LD / 2011 within a time frame as may be fixed by this Court.

For Petitioner : Mr.K.Muralisankar
For R-1 : Tribunal
For R-2 : Mr.M.Elanchezhian

ORDER

This writ petition has been filed challenging the impugned order, dated 04.03.2013 passed in ATA No.135 (13) 2012 with a consequential relief to direct the 2nd respondent to pay the amount of Rs.5,07,084/-.

2. Heard Mr.K.Muralisankar, the Learned Counsel appearing for the petitioner and Mr.M.Elanchezhian, the Learned Counsel appearing the respondent and perused the material documents available on record.

3. The contention of the petitioner Organization is that the 2nd respondent is an establishment covered under Employees Provident Fund Act. The 2nd respondent establishment has purposefully evaded to enroll the eligible employees to the EPF scheme for the period from April 2006 to March 2007 and June 2008 to August 2009. Based on this assessment, the 2nd respondent has already paid the amount along with interest also. The Employees Provident Fund Organization has proceeded further to impose penal damages under Section 14B of the Employees Provident Fund Act and has imposed 100% penal damages. Aggrieved over the same, the 2nd respondent has approached the Tribunal. The Tribunal has held that since there is no *mens rea* on the part of the 2nd respondent, hence damages cannot be claimed. Aggrieved over the same, the petitioner Organization is before this Court.

4. In the present case, the 2nd respondent has paid the EPF contribution and also paid the interest. When the question of penal damage arises, the Employees Provident Fund Organization is empowered to impose penal damages which is absolutely legal. However, the Tribunal has followed the judgment rendered by Hon'ble Supreme Court in Employees State Insurance Corporation vs. HMT Ltd., reported in 2008 (1) Scale 341 and has held that there is no mens rea on the part of the 2nd respondent, therefore the EPF organization cannot impose penalty. The issue of 14B was considered by subsequent judgments and the HMT case judgment was over ruled. In short mens rea cannot be a criteria, to impose penal damages under section 14B. Therefore, the impugned order passed by the Tribunal is against the judgments rendered in the issue of section 14B penal damages and the impugned order is liable to be quashed.

5. The period of default is from 4/2006 to 3/2007 and the assessment order was passed on 08.07.2011 and the 2nd respondent was directed to pay the amount within a period of 7 days. The 2nd respondent had paid the amount on 15.07.2011, thereby there is delay of five years. However, it is seen that the EPF organisation has imposed 100% penal charges under section 14B and the EPF is not empowered to impose 100% penalty.

6. Prior to 26.09.2008 the EPF organisation is empowered to impose penalty as 17%, 22%, 27% and 37%. After 26.09.2008 the EPF organisation is empowered to impose penalty as 5%, 10%, 15% and 25%. Therefore, this Court is inclined to modify the penal damages.

7. The contention of the 2nd respondent is that he is not entitled to pay the EPF amount and contested the case. However, it was finally decided on 08.07.2011 against the 2nd respondent and the 2nd respondent had paid the amount on 15.07.2011. Hence the 2nd respondent claims that he has not paid the amount belatedly, but had paid immediately after the 7A order was passed. The said contention cannot be accepted, since the period covered is from 4/2006 to 3/2007 and the delay is more than six months. Hence this Court is of the considered opinion that the petitioner is liable to penal charges to the extent of 37%. In the present case the 2nd respondent has already paid interest of Rs.2,87,716/- on 24.10.2011. The penal charges of 37% was imposed when there were no provisions to impose interest. In the present case when the 2nd respondent had paid interest, then the EPF is not entitled to impose 37% penal damages.

8. This Court after taking into consideration the fact that the assessment order was passed 08.07.2011 and the 2nd respondent had paid the amount on 15.07.2011 and also the fact that the 2nd respondent has paid the EPF amount and interest, deems it fit to impose 15% as penal damages against the 2nd respondent. The petitioner is directed to collect 15% as penal damages from the

2nd respondent and said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of the order.

9. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs.

Index : Yes / No
Internet : Yes
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20.06.2023

To

1. The Assistant Provident Fund Commissioner,
   O/o.The Regional Provident Fund Commissioner,
   Lady Dock College Road,
   Chokkikulam,
   Madurai District.

2. The Presiding Officer,
   The Employees Provident Fund Appellate Tribunal,
   Scope Minor, Core II,
   4th Floor, Lakshmi Nagar District Centre,
   Lakshmi Nagar,
   New Delhi.

S.SRIMATHY, J

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Order made in
W.P.(MD)No.13375 of 2018

20.06.2023