BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

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

W.P.(MD)Nos.20736 to 20741 of 2015
and
M.P(MD)Nos.1, 1, 1, 1, 1 & 1 of 2015

W.P.(MD)No.20736 of 2015

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub Regional Office,
P.B.No.588,
Sree Complex, D Block No.18,
Madurai Road,
Tiruchirappalli ... Petitioner

Vs.

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

2.M/s.Sri Balaji Agency
JB Tower Melachinthamani,
Trichy District - 620 002,
Rep. through is Managing Partner ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in A.T.A.No.176(13)2014 dated 17.06.2014 and quash the same as unconstitutional and consequently direct the second respondent to pay the amount in Ref.No.SDC/TN/TRY/43778/Circle-15/SRO-TRY/2014 dated 19.02.2014.

For Petitioner : Mr.I.Pinaygash
For Respondents : Tribunal - R1
No Appearance - for R2

<u>COMMON ORDER</u>

Since the issue involved in these Writ Petitions are similar in nature, these writ petitions are taken up together and disposed of by a Common order.

2. Heard the parties appearing on either side. Perused the material documents placed on record.

3. W.P(MD)No.20736 of 2015 is filed by the EPF organisation challenging the order dated 17.06.2014 passed in A.T.A. No.176(13)2014 by the

Tribunal and consequently directed the 2nd respondent to pay the amount assessed in order dated 19.02.2014. ***W.P(MD)Nos. 20737 to 20741 of 2015*** have been filed to quash the impugned order passed by the 1st respondent /Employee's Provident Fund Appellate Tribunal.

4. The contention of the writ petitioner is that the 2nd respondent comes under the purview of EPF provisions. But the 2nd respondent failed to remit the EPF amount and administration charges for the period from 11/2008 to 09/2013 and 8/2001 to 03/2009, hence a summon dated 29.11.0213 was issued and after enquiry the EPF organisation had passed order under section 14-B and 7Q. Aggrieved over the order the 2nd respondent had filed appeal in Tribunal. The Tribunal had passed an order restricting the damages as 10% of the actual damages levied by the authority. Hence the present writ petitions are filed.

5. It is seen different rate of damages was fixed prior to 25.09.2008 and for the subsequent period different rate of damages were fixed and the same is extracted hereunder:

Sl.No	Period of Default	Rate of Damages upto 25.09.2008 (% of Arrears p.a.)	Rate from 26.09.2008
1.	Less than 2 months	17%	5%
2.	2 months and above but less than 4 months	22%	10%
3.	4 months and above but less than 6 months	27%	15%
4.	6 months and above	37%	25%

Earlier only 14B damages was imposed at the rate of 17%, 22%, 27% and 37%. Subsequently interest was introduced wherein 10% of the demand was imposed. Hence damages plus interest were imposed as 17%+10%, 22%+10%, 27%+10% and 37%+10%. Thereafter the new rates of 5%, 12%, 17% and 25% was imposed and the interest of 10% was imposed separately. As far as the imposition of 5%, 12%, 17% and 25% is a discretionary power of the authorities. If any financial difficulty is expressed then the authorities have discretionary power to reduce. In the present case when the 2nd respondent has specifically stated that the said company is sick company, therefore levying 49% of damages is highly arbitrary. However, the petitioner organization submitted that as per new rates at least the rate of 25% may be imposed.

6. This Court is of the considered opinion when the company is stated to have sick company, then levy of 10% is reasonable. The Employees Provident Fund authorities have fixed higher rate of damages. The Tribunal has rightly considered the issue and reduced the rate of interest. Therefore, this Court is not inclined to interfere with the Tribunal order.

7. Accordingly, the writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **26.06.2023**
Internet : Yes
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<u>To</u>

The Presiding Officer
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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COMMON ORDER in
W.P.(MD)Nos.20736 to 20741 of 2015

26.06.2023