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W.A.Nos.1019 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

Writ Appeal No.1019 of 2024

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.

... Appellant

Vs.

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



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to allow the Writ Appeal and set aside the order dated 01.06.2023 in WP No.6767 of 2015.

For Appellant : Mr.M.S.Viswanathan

Respondents : No appearance

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The EPF Organisation is on Appeal aggrieved by the order of the Writ Court confirming the order of the Appellate Authority dated 29.11.2013.

2. The first respondent was accused of having defaulted in payment of the Provident Fund Contribution, though it had collected the money from the employees. Since the contribution was made good belatedly proceedings were initiated under Section 14(B) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for levy of damages. The Original Authority viz., the Assistant Provident Fund Commissioner by his



order dated 23.02.2012 levied damages of Rs.3,36,729/- being 10% of the defaulted contribution. Aggrieved, the Company moved the Appellate Authority.

3. The Appellate Authority relying upon the judgment of the Hon'ble Supreme Court in ***Employees State Insurance Corporation vs. HMT Ltd. and another***, reported in (2008) 3 SCC 35, held that *mens rea* has to be established even where there is a breach of civil obligations and liabilities. The Appellate Authority found that there was no willful default and therefore, reduced the penalty to 5% of the penalty determined by the Original Authority. Aggrieved the Corporation came before this Court in WP No.6767 of 2015, the Writ Court dismissed the Writ Petition, agreeing with the conclusions of the Appellate Authority.

4. The Writ Court, while dismissing the Writ Petition, though referred to the judgment of the Hon'ble Supreme Court in ***Horticulture Experiment Station vs. The Regional Provident Fund Organisation***, affirms the conclusions of the Authority that in the absence of any willful default, the penalty can be reduced. On the said conclusion, the Writ Petition was dismissed. Aggrieved, the Authority is on Appeal.



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5. We have heard Mr.M.S.Viswanathan, learned counsel appearing for the appellant. Though the first respondent is represented by a counsel, the said counsel has been consistently absent.

6. Mr.M.S.Viswanathan, learned counsel appearing for the appellant would vehemently contend that in view of the judgment of the Hon'ble Supreme Court in *Horticulture Experiment Station vs. The Regional Provident Fund Organisation*, the law is settled that *mens rea* is not an essential element for a person to be visited with the consequence of damages for breach of civil obligations. The Appellate Authority has relied upon the judgment of the Hon'ble Supreme Court in *Employees State Insurance Corporation vs. HMT Ltd. and another*, referred to *supra*, to conclude that in the absence of *mens rea*, the damages could be reduced. The Writ Court has also affirmed the said conclusion.

7. The learned counsel would therefore fault the Appellate Authority and the Writ Court for having given undue indulgence to a defaulter. We find some force in the submission of the learned counsel since the order of the Appellate Authority was delivered prior to the dictum of the



Hon'ble Supreme Court in ***Horticulture Experiment Station vs The Regional Provident Fund Organisation***. Now that the law is settled to the effect that absence of *mens rea* cannot be a ground to escape liability for damages. The conclusion of the Appellate Authority becomes questionable.

8. We do not think we can uphold the finding of the Appellate Authority or the Writ Court that the absence of any willfulness in the default would be a factor to decide on the liability for damages. Once there is a belated payment, whether the payment is willful or not is not a material factor to decide on the liability. We therefore find that the reliance placed on the judgment of the Hon'ble Supreme Court in ***Employees State Insurance Corporation vs. HMT Ltd. and another***, referred to supra, may not be fully justified.

9. The Writ Court has also affirmed the said action in reduction of the percentage of damages levied, on the ground that it is not willful and there is no *mens rea* to withhold the payment. We find it difficult to affirm the said conclusion in the light of the law declared by the Hon'ble Supreme Court in ***Horticulture Experiment Station vs. The Regional Provident Fund Organisation***.



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10. We therefore set aside the order of the Writ Court and that of the Appellate Authority, and we remit the matter to the Appellate Authority, for the Appellate Authority to reconsider the issue in the light of the pronouncement of the Hon'ble Supreme Court in *Horticulture Experiment Station vs. The Regional Provident Fund Organisation*, needless to state that the Appellate Authority will give an opportunity to the respondent, before it pronounces upon the Appeal.

11. In the light of the above, the Writ Appeal is disposed of. Parties will bear their own costs.

(R.SUBRAMANIAN, J.) (C.KUMARAPPAN, J.)
22.11.2024

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

1. The Presiding Officer,
Employees- Provident Fund Appellate Tribunal,
Scope Minar, Core~II, 4th Floor,



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