IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 19.06.2024

PRONOUNCED ON: 12.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL

W.A.No.881 of 2023
and C.M.P.No.8734 of 2023

The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road, Coimbatore-641018. ...Appellant

-Vs-

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   New Delhi - 110 092
2. M/s. Tirupur Cotton Spinning & Weaving Mills Ltd.,
   PB No.257, P N Road,
   Tirupur - 641 602
   Rep. by Managing Director. ..Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent against the order dated 17.04.2013 made in W.P.No.24831 of 2005.

For Appellant : Mrs.R.Meenakshi

For R1 : Court

For R2 : Mr.C.Manohar Gupta

J U D G M E N T

Per J.NISHA BANU, J.

This Writ Appeal has been filed challenging the order passed in W.P.No.24831 of 2005, dated 17.04.2013, wherein, the order passed by the EPF Appellate Tribunal was set aside.

2.1. The facts of the case is that the Regional Provident Fund Commissioner (hereinafter called as RPFC) issued show cause dated 11.4.2000 to the 2nd respondent-Mill for levying damages. The Mill replied that since it was facing financial crisis and has become sick unit, damages could not have been levied.

2.2. By order dated 12.09.2000, the RPFC levied damages u/s.14-B totalling Rs.16,03,049/- for the delayed remittances of PF and other dues for the period March 1980, Fen 1981, July 1983, June 1985 and August 1985 to April 1987.

2.3. The second respondent-Mill has filed an Appeal before the first respondent-EPF Appellate Tribunal, challenging the order dated 12.09.2000.

2.4. The Appellate Tribunal, passed an order by reducing the damages to 50% and the order of levying damages was modified to that extent.

2.5. Aggrieved by the said order of the Appellate Tribunal, the second respondent-Mill has filed W.P.No.24831 of 2005.

2.6. The learned Single Judge, held that BIFR sanctioned the rehabilitation scheme for revival of the Mill; therefore, the levy of damages to 50% fixd by the Appellate Tribunal was set aside. The said order is now challenged by the Regional Provident Fund Commissioner/appellant herein.

3. The learned counsel for the appellant-Department would contend that the Company was under financial crisis and was sick company from the year 1987 to 1990. But, the period in respect of contribution of dues to the Department was much prior to the sick period. Therefore, the above said aspect has not been considered by the learned Single Judge. Therefore the order passed by the learned Single Judge exempting the Mill from paying damages is liable to be set aside. In support of his contentions, learned counsel relied on the Judgment of the Supreme Court in ***Civil Appeal No.6100 of 2023***.

4. The learned counsel appearing for the second respondent-Mill would contend that the default in remittance of contributions to the Department was due to the reason that it was a sick company and the matter was referred to the BIFR. The BIFR sanctioned a Draft Rehabilitation Scheme on 14.02.1990 for the revival of

the Mill. The Central Government also permitted them to pay the dues viz., the statutory liability relating to EPF and ESI over the next one to three years from the date of passing of orders without any interest. Subsequently, the company with the help of promoters were able to start the operation of the Mill and fulfilled all conditions laid down in the draft Rehabilitation Scheme.

5. The learned counsel for the second respondent would further contend that a detailed explanation about the BIFR proceedings and the financial crisis was stated and as per the Rehabilitation Scheme, the due amount was paid for the period from 1980 to 1987 and there is no *mensria* or deliberate act on the part of the Mill in not paying the EPF contributions within the time. Taking note of all the above aspects, the learned Single Judge set aside the order of the EPF Appellate Tribunal and permitted the Mill to pay the dues without any interest.

6. Heard both sides and perused the entire records.

7. The sum and substance of the Writ Appeal is with respect to the EPF default amounts pertaining to the year 1980 to 1987. The records would transpire

that the second respondent-Mill was facing financial crisis and it was a sick unit from 1987 onwards. The Rehabilitation Scheme was also framed and thereafter, the Mill was able to run the business. The crucial years viz., 1980 to 1987 is concerned, at that relevant point of time, the second respondent-Mill was not a sick unit and thereby, they cannot take the advantage of the BIFR proceedings.

8. In the case of ***Assistant Provident Fund Commissioner vs. M/s. Laxmi Machine Works Limited and Others in Civil Appeal No.6100 of 2023***, the Hon'ble Supreme Court, held as follows:

> *"The issue before the High Court was of waiver of damages for the period from March, 2000 to March, 2002, on account of default in payment of Provident Fund contribution. In the paragraph 8 of the impugned judgment, the High Court has proceeded on the footing that waiver for the period between March, 2000 to March, 2002 has to be granted. However, in the paragraph 9 of the impugned judgment, the High Court has recorded that on 27th June, 2003, the Board for Industrial and Financial Reconstruction (BIFT) declared Textool Company Limited (TCL) as a sick industry. The merger of TCL with the first respondent was with effect from 1st April, 2003. Therefore, there was no occasion for the High*

Court to grant waiver of penal damages levied for the period from March, 2000 to March, 2002.

Accordingly, the impugned judgment dated 22nd August, 2022 of the Division Bench of the High Court is set aside and the order dated 8th September, 2011 passed by the learned Single Judge is restored.

The appeal is accordingly allowed."

The above case law make it clear that the concession of penal damages can be waived for the sick period and not for the other period. In the case on hand, the second respondent-Mill suffered financial crisis during the years 1987 to 1990. Based on the Rehabilitation Scheme, the second respondent-Mill has started the business. The contributions are pertaining to the year 1980 to 1987. Therefore, the second respondent-Mill cannot take advantage of the proceedings of BIFR for delayed payment of dues.

9. In respect of quantum of damages, the Appellate Tribunal had reduced the damages as 50%. Since the second respondent-Mill has already deposited a sum of Rs.4 lakhs, the learned Single Judge directed the EPF department to adjust towards future contributions. In the light of the discussions made supra in respect of default payment by the Mill during the non-sick period, we are of the view that the amount

already deposited by the second respondent-Mill viz., Rs.4 lakhs can be adjusted towards damages.

10. In the result, the Writ Appeal is allowed on the terms stated supra. The order dated 17.04.2013 passed in W.P.No.24831 of 2005, is set aside to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

(J.N.B.,J.) (P.D.B.,,J.)

12.08.2024

nvsri

To

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   New Delhi - 110 092

J.NISHA BANU,J.,
and
P. DHANABAL,J.,

nvsri

Judgment made in
W.A.No.881 of 2023

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