



WP(MD)No.718 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.718 of 2021 and
WMP(MD)No.598 of 2021**

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
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,
Laxmi Nagar, District Centre,
Laxmi Nagar, New Delhi.

2.M/s.Peekay Enterprises,
Thirumalai Samuthiram Post,
Thanjavur - 614 702

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the order passed by the 1st respondent in ATA No.804(13) 2014 dated 16.10.2014 and quash the same as unconstitutional.

For Petitioner : Mr.N.Dilip Kumar

For Respondent : No representation

No.2



WP(MD)No.718 of 2021

ORDER

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This writ petition is filed by the EPF authority as against the orders passed by the Employees Provident Fund Appellate Tribunal, New Delhi in ATA.No.804 (13) of 2014.

2.The above said appeal was filed by the respondent establishment as against the damages levied by the EPF authority under Section 14-B of the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act']. The respondent establishment failed to pay the EPF contribution from January 2009 to March 2012. Therefore, show cause notice was issued by the petitioner to the respondent and an order under Section 14-B of the Act was passed by levying a damages of Rs.9,24,771/-. This order of the EPF authority dated 26.06.2014 was challenged before the Provident Fund Appellate Tribunal, New Delhi in the appeal in ATA No.804 (13) of 2014. The appeal was allowed by the appellate Tribunal by order dated 16.10.2014 on the ground that the EPF authority has pre-determined the quantum of damages as per the rules prescribed in paragraph No.31 of



WP(MD)No.718 of 2021

the EPF schemes and conveyed it to the establishment in the notice without conducting an enquiry and the Commissioner has failed to find out the elements of *mens rea* on the part of the establishment for the delay remittance of the EPF dues. The appellate Tribunal has also held that the EPF authority has failed to prove that the establishment has wilfully delayed the remittance of the PF contribution.

3.The learned Counsel for the petitioner submits that the damages levied by the EPF authority under Section 14-B of the Act has civil consequences for the delayed payment and it is not levied as a penalty for criminal liability. The learned Counsel by relying on the judgment of the Hon'ble Full Bench of this Court in ***Sun Pressing (P) Ltd represented by its the Managing Director, SIDCO Industrial Estate, Madurai Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi*** reported in ***2024-1- Writ.L.R.801*** submits that the Hon'ble Full Bench has held that *mens rea* and *actus reus* are not *sine qua non* for levying penalty under Section 14-B of the Act. The learned Counsel further submits that without any basis and any reasoning, the appellate tribunal has come to the conclusion that there was no wilful delay on the



WP(MD)No.718 of 2021

part of the establishment in remitting the EPF dues and set aside the order passed by the EPF authority. The learned Counsel has also relied on the judgment of the Hon'ble Supreme Court in ***Horticulture Experiment Station Gonikoppal Vs Regional Provident Fund Organisation*** reported in ***(2022) 2 SCC 516*** and submits that the requirement of *mens rea* and *actus reus* is not an essential element for levying penalty and damages for breach of civil liabilities.

4. Though the respondent establishment has been served and name has been printed, there is no representation for the respondent.

5. This Court considered submission of the petitioner and also perused the materials placed on record.

6. Admittedly the respondent establishment failed to pay the contribution as required under the EPF Act from the month January 2009 to March 2012. The delayed payment is liable to be imposed with a penalty under Section 14-B of the Act and also liable to be collected with interest as per Section 7-Q of the Act. As per the provisions under



WP(MD)No.718 of 2021

Section 14-B of the Act, the writ petitioner EPF authority has conducted enquiry and has levied the damages under Section 14-B of the Act by order dated 26.06.2014. This order passed under Section 14-B of the Act was challenged by the establishment before the Appellate Tribunal under Section 7-I of the Act in ATA No.804(13) of 2014 and the same was allowed by the appellate tribunal. The EPF authority has found that there are elements of *mens rea* on the part of the establishment in delay remittance of the EPF dues. The appellate tribunal has held that the EPF authority has failed to prove that the establishment has wilfully defaulted in remitting the PF contribution. Though the appellate tribunal has come to the conclusion that there is no *mens rea* on the part of the establishment in delay remittance of EPF dues and there was no deliberate default on the part of the establishment, the Tribunal has not discussed the grounds for arriving at such a conclusion. The element of *mens rea* would arise only for imposing penalty for criminal prosecution. This issue has already been decided by the Hon'ble Supreme Court and by the Hon'ble Full Bench of this Court.



WP(MD)No.718 of 2021

7. The Hon'ble Supreme Court in ***Horticulture Experiment Station***

Gonikoppal Vs Regional Provident Fund Organisation reported in
(2022) 2 SCC 516 has held as under:

“15. Taking note of the exposition of law on the subject, it is well settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

19. Taking note of the three-Judge Bench judgment of this Court in Union of India Vs Dharmendra Textile Processors, which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities.”

8. The Hon'ble Supreme Court in yet another judgment in ***McLeod Russel India Ltd Vs Regional Provident Fund Commissioner***, reported in (2014) 15 SCC 263, while deciding whether any *mens rea or actus reus* is a necessary ingredient for levy of penalty under Section 14-B of



WP(MD)No.718 of 2021

the Act, has held that the proceedings under Section 14-B of the Act cannot be treated in par with the criminal prosecution.

9.The Hon'ble Full Bench of this Court in ***Sun Pressing (P) Ltd represented by its the Managing Director, SIDCO Industrial Estate, Madurai Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi*** reported in ***2024-1- Writ.L.R.801*** has held as under:

“Therefore, levy of damages under Section 14-B of the Act is not a criminal liability but a civil liability arising out of a statutory obligation. In view of the principles reiterated by several judgments distinguishing the difference between criminal liability and the civil liability for violation of statutory obligation and the judgment in Horticulture Experiment Station ,Gonikoppal, Coorg v. Regional Provident Fund Organization, (2022) 4 SCC 516, we are bound to hold that mens rea or actus reus is not an essential requirement or sine quo non for levying penalty under Section 14-B of the Act.”



WP(MD)No.718 of 2021

10. In view of the above principles laid down by the Hon'ble Supreme Court and the Hon'ble Full Bench of this Court, the findings of the appellate tribunal that there is no element on the part of the respondent establishment for *mens rea* cannot be a ground to set aside the order of the EPF authority passed under Section 14-B of the Act. Moreover the appellate Tribunal has not made any discussion on what basis it has come to the conclusion that there is no wilful or deliberate delay on the part of the establishment in remitting the EPF dues. Therefore, this writ petition is allowed. The impugned order is set aside. No costs. Consequently connected miscellaneous petitions are closed.

21.10.2024

Index : Yes / No
DSK
To

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WP(MD)No.718 of 2021

B.PUGALENDHI.J.,

DSK

WP(MD)No.718 of 2021

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