



WP(MD)No.25253 of 2019

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.25253 of 2019 and
WMP(MD)No.21842 and 21845 of 2019**

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

...Petitioner

Vs

M/s.TMP.Manoharan & Co,
Represented through its Proprietor,
Block No.29, Neyveli,
Cuddalore.

...Respondent

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 Employees Provident Fund Appellate Tribunal, New Delhi in ATA No.637(13) 2014 dated 16.10.2014 and quash the same as unconstitutional.

For Petitioner : Mr.I.Pinaygash

For Respondent : Mr.K.Rajeshwaran

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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.637 (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 February 2009 to December 2013. 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.5,84,573/-. This order of the EPF authority dated 06.07.2014 was challenged before the Provident Fund Appellate Tribunal, New Delhi in the appeal in ATA No.637 (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



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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



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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.The learned Counsel for the respondent seeks time that he has to receive the copies of the writ petition from the petitioner.

5.This writ petition of the year 2019 is taken up for hearing only in the year 2024. This Court has also verified the records and found that the respondent establishment has filed their vakalath on 09.01.2020 and has entered appearance through advocate. Since the respondent entered appearance in the year 2020 and has not collected the papers so far, this Court is not inclined to grant further time. However the petitioner has been permitted to furnish copies to the respondent to make his submissions.



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6.This Court considered the rival submissions and also perused the materials placed on record.

7.Admittedly the respondent establishment failed to pay the contribution as required under the EPF Act from the month February 2009 to December 2013. The delayed payment is liable to be imposed with a penalty under Section 14-B of the Act and also liable to collected with interest as per Section 7-Q of the Act. As per the provisions under 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 06.07.2014. 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.637(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



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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.

8.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



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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.”

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

10. 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



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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.”

11.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.

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Index : Yes / No
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B.PUGALENDHI.J.,

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