IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29220 of 2015

Central Board of Trustees, EPF,
Through
The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Tambaram,
No.3, Rajaji Salai,
Chennai-600 045. ... Petitioner

Vs.

1. The Presidency Kid Leather Pvt. Ltd.,
Rep.by its Director,
No.15, Kaniivakkam Village,
Guduvancherry-603 202.

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
7th Floor, No.60, Skylark Buildings,
Nehru Palace,
New Delhi-110 019. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the order passed by the second respondent in A.T.A.No.358(13) of 2014 dated 20.11.2014 and quash the same.

For Petitioner	:	Mr.Y.T.Aravind Gosh
For Respondents	:	Mr.Zaffrullah Khan for R1 R2-Tribunal

O R D E R

The petitioner is the Employees Provident Fund Organisation. Challenging the order of the second respondent, namely, the Employees Provident Fund Appellate Tribunal, passed in A.T.A.No.358(13) 2014 dated 20.11.2014, the present Writ Petition has been filed.

2. The first respondent is a Private Limited covered under the Employees Provident Fund Act and due to delayed payment of Employees Provident Fund dues and interest, notice was issued under Section 14B of the Act and Section 7Q of the Act, fixing the personal hearing on 18.11.2013. Since none appeared in the hearing inspite of notice, enquiry was adjourned to 29.11.2013 and subsequently, the enquiry was adjourned

to 18.12.2013 and accordingly, reminders were sent claiming the due amount. Thereafter, on 18.12.2013, the General Manager of the first respondent attended the enquiry and requested waiver of the interest and damages on the ground that the first respondent Company was in financial crisis, however, as per the law laid down by the Hon'ble Apex Court of India, the financial difficulty cannot be a ground for reduction of damages and therefore, the proceedings under Section 7Q and 14B of the Act were issued on 23.12.2013 and thereafter, the order under Section 8F of the Act for recovering the dues was also issued on 04.02.2014. Against the order dated 23.12.2013 issued under Sections 14B and 7Q of the Act, the first respondent preferred appeal before the second respondent Tribunal in A.T.A.No.358 (13) 2014. The Tribunal, vide order dated 20.11.2014, quashed the order insofar as the penalty of damages imposed under Section 14B of the Act and ordered payment of 10% of actual assessment of damages assessed by the Assistant Provident Fund Commissioner along with entire interest to be recovered from the first respondent. Aggrieved by the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner reiterated the averments made in the affidavit filed in support of the writ petition and contended that the order of the Tribunal suffers from infirmity as the Tribunal failed to note that the first respondent was a chronic defaulter and therefore, exercising the power under Section 7A of the Act, reducing the damages which was fixed by the petitioner herein is unsustainable. He submitted that the interest under Section 7Q of the Act is not appealable. The Tribunal has passed an order reducing the damages along with interest under Section 7Q of the Act and therefore, the order passed by the Tribunal is contrary to the provisions of the Act. The learned counsel further contended that the first respondent has come before the Tribunal with unclean hands by committing intentional delay in paying their statutory EPF dues which have already been deducted from the salary of the employees and diversified the same for its own use. Therefore, they are not entitled to any indulgence or discretionary orders form the Tribunal. The learned counsel further reiterated that clubbing of damages under Section 14B of the

Act and interest under Section 7Q of the Act is arbitrary and therefore, the impugned order passed by the Tribunal suffers from infirmity and needs to be set aside.

4. The learned counsel appearing for the first respondent would submit that the first respondent Establishment delayed the payment of EPF Contribution and the Department imposed the damages and interest under Section 14B and 7Q of the Act, without considering the mitigating circumstances faced by the first respondent. Therefore, he would submit that due to continuous loss of business operation got suspended from December 2012, which fact was though taken before the Employees Fund Appellate Tribunal was not considered and inspite of the verbal contention, the EPF has passed an non-speaking order on 23.12.2013 claiming damages and interest under Sections 14B and 7Q of the Act, which compelled the first respondent to approach the Tribunal for appropriate relief. The Tribunal, after considering the contentions of both sides, has passed a speaking order and the same needs no interference.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

6. This Court has considered the rival submissions made on both sides and perused the materials available on record.

7. Admittedly, the first respondent has delayed the payment of Employees Provident Fund dues of their employees, due to which, notice was issued under Section 14B and Section 7Q of the Act for non-payment of EPF dues and interest by fixing the personal hearing on 18.11.2013. During the personal hearing, the General Manager of the first respondent attended the hearing and submitted a representation that their business operation has been suspended from 01.02.2013 due to heavy loss. During the year 2008-2009, 2011-2012, there was no production or sale from February 2013 and requested for waiver of interest and damages. The Tribunal, after considering the facts and circumstances, has come to a conclusion that the

level of 100% damages against the first respondent was without considering the circumstances of delay and the reasons for delay, by referring to the judgments of the Hon'ble Supreme Court in the case of ***APFC vs. Ashram Madhyamik,*** reported in ***2007 LLR, 1249, ESIC vs. HMT Limited*** reported in ***2008 I LLJ 814 SC*** and ***P.T.Rajan vs. T.P.M.Sahir and others*** reported in ***2003 (8) SCC 498,*** has stated that the word "may" used in Section 14B of the Act cannot be construed as "shall" and therefore, the Authority was under obligation to apply his mind before this Court before imposing the damages by way of penalty. That apart, the Hon'ble Supreme Court has time and again reiterated that simply because a Statutory Provision enables the Authority to impose penalty does not mean that such penalty should be imposed in a mechanical manner without looking into the circumstances and the facts as to whether there was any *mens rea* or *actus reus* on the part of the employer. Hence, this Court is of the view that in view of the settled principles, the order passed by the EPF Authority suffers from serious lapse and the Tribunal has right in holding that the penalty of damages imposed under Section 14B and interest under Section 7Q of the Act has to be quashed and therefore, the order passed by the Tribunal does not require any interference by this Court.

8. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

10.03.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

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M.DHANDAPANI,J.

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