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W.P.No.30817 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30817 of 2015

The Board of the Trustees of the
Employees Provident Fund Organisation
Represented by
The Assistant Provident Fund Commissioner
Sub Regional Office,
No.101, 100ft Road,
Sree Venni Commercial Complex
Olandaikeerpalayam,
Puducherry – 605 004.

... Petitioner

Vs.

1.M/s.Crimson Metal Engineering Company Ltd.,
No.163/1, K Sons Complex,
II Floor, Broadway,
Chennai – 600 108.

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

Prayer:

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari to call for the records relating to the
proceedings of the second respondent dated 15.03.2013 in Ref.No.ATA



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No.179(13) of 2012 and quash the order passed therein.

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For Petitioner : Mr.K.Srinivasamurthy
For Respondents : Mr.Vignesh Imayavaramban for R1
for M/s.M.Nirmal Kumar
R2 – Tribunal

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records relating to the proceedings of the second respondent dated 15.03.2013 in Ref.No.ATA No.179(13) of 2012 and quash the order passed therein.

2.The learned counsel appearing for the petitioner submitted that the first respondent is covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 [hereinafter referred to as 'Act']. Since the first respondent made belated payment of the amount payable under the Act for the period from 1998 – 1999 to 2007 – 2008, enquiry was conducted and the first respondent dragged on the proceedings by stating one reason or the other. On 20.10.2011, the Assistant Provident Fund Commissioner directed the first respondent to pay damages to the tune of Rs.10,18,360/-, as against which, the first respondent preferred appeal before the second respondent and the second respondent passed the impugned order reducing the damages @ 5% per annum.



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3.The learned counsel appearing for the petitioner further submitted that the petitioner not passed order under Section 7A of the Act, since the first respondent was regularly making the contribution, however, for the belated payment, damages was assessed by the Assistant Provident Fund Commissioner as per Section 14B of the Act and the same was challenged by the first respondent before the second respondent. The second respondent without considering para 32A of the Employees Provident Fund Scheme, 1952, exercised its discretionary power and reduced the damages @ 5% per annum, which is not sustainable one.

4.The learned counsel appearing for the petitioner further submitted that para 32A of the Employees Provident Fund Scheme, 1952 clearly states as to how much damages has to be assessed viz., if the period of default is less than two months 5%; two months and above but less than four months 10%; four months and above but less than six months 15%; six months and above 25%. *Mens rea* or willful default need not be considered since damage is covered in the Scheme of the Act and Scheme has to be implemented in letter and spirit.



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5.Per contra, the learned counsel appearing for the first respondent submitted that at the time of enquiry, the first respondent establishment was under BIFR and subsequently, BIFR declared the first respondent as sick industry on 15.12.2010. The learned counsel further submitted that for belated payment of the contribution, the petitioner is entitled to assess the damages as per Section 14B of the Act. As per para 32A of the Employees Provident Fund Scheme, 1952, if the period of default is less than two months 5% damages has to be assessed; two months and above but less than four months 10% damages has to be assessed; four months and above but less than six months 15% damages has to be assessed; six months and above 25% damages has to be assessed, however, the Assistant Provident Fund Commissioner while assessing the damages did not specifically mention the period of default and directed the first respondent to pay lumpsum damages to the tune of Rs.10,18,360/-, as against which, the first respondent preferred appeal before the second respondent and the second respondent rightly appreciated the factual aspects and passed the impugned order reducing the damages @ 5% per annum.

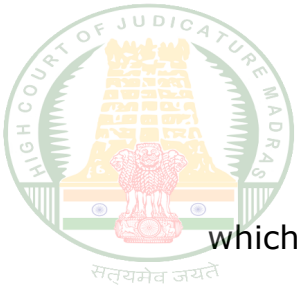
6.Heard the learned counsel appearing for the petitioner as well



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as the learned counsel appearing for the first respondent and perused the materials available on record.

7. Admittedly, the first respondent made belated payment of the amount payable under the Act for the period from 1998 – 1999 to 2007 – 2008 for which, enquiry was conducted and damages was assessed by the Assistant Provident Fund Commissioner. For belated payment of the contribution, the petitioner is entitled to assess the damages as per Section 14B of the Act. As per para 32A of the Employees Provident Fund Scheme, 1952, if the period of default is less than two months 5% damages has to be assessed; two months and above but less than four months 10% damages has to be assessed; four months and above but less than six months 15% damages has to be assessed; six months and above 25% damages has to be assessed, however, the Assistant Provident Fund Commissioner while assessing the damages did not specifically mention the period of default and directed the first respondent to pay lumpsum damages to the tune of Rs.10,18,360/-, as against which, the first respondent preferred appeal before the second respondent and the second respondent rightly appreciated the factual aspects and passed the impugned order by reducing damages @ 5% per annum,



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which warrants no interference.

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M.DHANDAPANI,J.
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8.The writ petition is dismissed. No costs.

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

To

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
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