



W.P. No.19620 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.19620 of 2022
and W.M.P. No.18924 of 2022

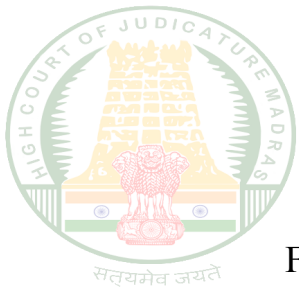
M/s. Presidency Kid Leather Limited
No.21, Spartan Nagar,
First Floor, Mogappair East,
Chennai - 600 059.
represented by its Managing Director .. Petitioner

vs.

The Assistant Provident Fund Commissioner (C & R),
EPF Organization Regional Office,
3, Rajaji Salai, Tambaram,
Chennai - 600 045. .. Respondent

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the Central Government Industrial Tribunal-cum-Labour Court, Chennai in EPFA No.478 of 2017 in EPFA No.478 of 2013 and quash its order dated 30.01.2020.

For Petitioner : Mr. Haroon Al Rasheed



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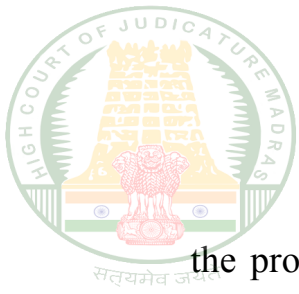
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For Respondent : Mr. Y.T. Aravind Gosh

ORDER

This Writ petition has been filed as against the order passed by the Central Government Industrial Tribunal cum Labour Court, Chennai in EPFA No.478 of 2017/ATA No.1228(13)/2014 in EPFA No.478 of 2013 and to quash the order dated 30.01.2020, wherein the petitioner herein has preferred an appeal challenging the order passed by the Provident Fund Commissioner under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act by levying the damages of Rs.89,62,778/- and the order passed by awarding interest of Rs.43,77,997/- under Section 7Q of the Employees Provident Fund Act dated 10.10.2014.

2. The learned counsel for the petitioner would submit that the petitioner was a private limited company incorporated under the Companies Act and was engaged in the business of manufacture and export of finished leather from raw hides and skins. Due to administrative reasons and rise in raw material cost, the business was severely affected in terms of turn over and liquidity. The petitioner could not repay the loans to the bankers, thereby the bankers invoked SARFAESI proceedings. The company had closed its business in June 2013. The assets of the petitioner company were sold under



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the proceedings of SARFAESI Act in the month of March. Thereafter, the company discharged the entire liabilities of the bank. The statutory liabilities such as EPF dues, ESI dues with full interest were settled in March 2014. Therefore, there was a delay in payment of contribution and the same is neither willful nor wanton. The workers were settled under Section 18(1) of the Industrial Disputes Act on 02.04.2014. The respondent issued notices dated 10.12.2013, 12.03.2014 and 01.05.2014 claimed damages and interest towards belated remittance for the period from February 2011 to February 2013. The petitioner also sent reply that the petitioner was facing various business issues during the financial years from March 2008 to March 2013. However, the respondent claimed damages under Section 14B of the Act to the extent of Rs.89,62,778/- and a sum of Rs.43,77,997/- towards interest in terms of Section 7Q of the Industrial Disputes Act. The petitioner preferred an appeal in ATA No.1228(13) of 2014 and the same was transferred to the Central Government Industrial Tribunal, Chennai and renumbered as EPFA 478 of 2017. The Tribunal failed to consider the mitigating circumstances and the loss suffered by the petitioner and partially waived the demand of damages and reduced the order to 50% of the damages determined. The Tribunal directed the appellant to deposit 50% of damages awarded by the

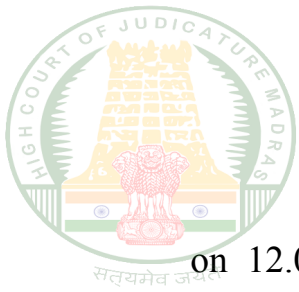


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Authority and as far as Section 7Q is concerned, the Tribunal rejected the same. Therefore, the order passed by the Tribunal is against law and the same is liable to be quashed. Moreover, already the Tribunal reduced the damages to 10% for the period from 2010 to 2011 and as against the same, the respondent preferred a W.P. No.29220 of 2015 and the same was dismissed. Therefore, this Court also, on the same lines, may reduce the damages to 10%.

In support of his contention, the learned counsel appearing for the petitioner has relied upon the judgements of this Court in (i) ***Sun Pressings (P) Ltd., vs. The Presiding Officer, EPF Appellate Tribunal and another in W.P. (MD) Nos.7339 of 2013 and batch cases and (ii) Central Board of Trustee, EPF vs. The Presidency of Kid Leather Pvt. Ltd., in W.P. No.29220 of 2015.***

3. The learned counsel appearing for the respondent would submit that the Provident Fund Commissioner determined the damages for the belated payment of contributions and arrived the damages as per law and quantified the amount to Rs.89,62,778/- and for the interest, arrived quantum of Rs.43,77,997/-. Already notices were issued to the employer for the damages

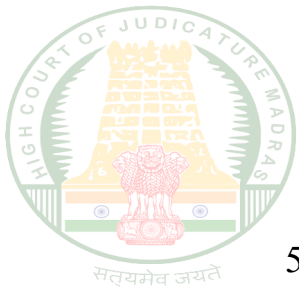


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on 12.03.2014 and over the levy of damages and simple interest for the belated remittance of contributions, personal hearing was fixed on 07.04.2014. None appeared and hence the case was adjourned to 23.04.2024. Again notice was issued on 10.04.2014. None appeared, but the petitioner issued letters dated 04.04.2014 and 22.04.2014. Again the matter was adjourned to 29.04.2014. Thereafter, the General Manager of the petitioner establishment appeared. Therefore, only after affording opportunity, the order was passed by the Authority and it is an admitted fact that there is a delay in payment of contributions. Therefore, the Authority quantified the amount and no any violation in quantifying the amount. The Appellate Authority also fairly considered and reduced the amount of damages of 50% and the interest portion was not altered and directed the respondent to pay the entire interest. Therefore, the authorities have passed orders by following the rules. Therefore, prayed to dismiss the Writ petition.

4. Heard both sides and perused the entire materials available on records5.

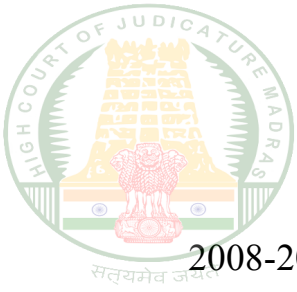


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5. In this case, there is no dispute that the petitioner company had faced SARFAESI proceedings and the belated payments were also admitted by the petitioner. The authorities under Employees Provident Fund quantified the amount of damages under Section 14B and interest under Section 7Q of the Act after affording opportunity to the petitioner. From the order, it is seen that the enquiry proceedings were adjourned thrice and thereafter, on behalf of the petitioner, one N. Sundaram, the General Manager of the petitioner company, appeared and thereafter, the Authority has passed the order. The Appellate Authority, after considering the facts and circumstances and the discretion under Section 14B of the Act and Para 32A of the Scheme, waived the damages by reducing it to 50%. As far as the interest under Section 7Q of the Act is concerned, since there is no provision for appeal under Section 7Q, it was rejected. The Appellate Authorities have passed a reasoned order by exercising power under Section 14B and Para 32A of the Scheme.

6. However, it is an admitted fact that the petitioner company faced SARFAESI proceedings. Already the Provident Fund Authorities awarded damages and interest through an order dated 23.12.2013 for the period from



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2008-2009 and 2011-2012 and the same was challenged before the Tribunal in ATA No.358(13)/14 and the Tribunal reduced the damages into 10%. Therefore, the same yardsticks may be applied to the subsequent period, which is impugned.

7. In this context, the learned counsel for the petitioner relied upon judgments of this Court in (i) ***Sun Pressings (P) Ltd., vs. The Presiding Officer, EPF Appellate Tribunal and another in W.P. (MD) Nos.7339 of 2013 and batch cases and (ii) Central Board of Trustee, EPF vs. The Presidency of Kid Leather Pvt. Ltd., in W.P. No.29220 of 2015.***

On a careful persual of the above said judgment in *W.P. No.29220 of 2015*, it reveals that already the petitioner company challenged the order passed by the Authority under EPF Act for the years from 2008-2009 and 2011-12, for the levying of damages and interest under Sections 14B and 7Q of the Act respectively for the belated payments before the Appellate Authority in ATA No.358(13) of 2014 and the same was allowed by reducing the damages to 10% through an order dated 20.11.2014 and the same was challenged by the Provident Fund Authorities before this Court through a



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Writ petition and the same was dismissed.

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8. On a careful perusal of the judgment of ***Sun Pressings (P) Ltd., vs. The Presiding Officer, EPF Appellate Tribunal and another in W.P. (MD) Nos.7339 of 2013 and batch cases***, wherein the Hon'ble Division Bench of this Court framed certain guidelines in respect of levying damages under Section 14B of the Employees Provident Fund Act. The guideline nos.(iv) and (v) read as follows:-

'(iv) When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v) The Authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order'.

In view of the above said guidelines issued by this Court, when the establishment is being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages and the Authority under the EPF Act has to consider the mitigating circumstances including the financial difficulties projected by the employer



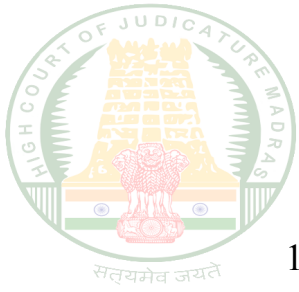
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and pass a reasoned order.

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9. In the case on hand also, the petitioner company faced proceedings under the SARFAESI Act and the same has not been denied by the respondent. Therefore, as per the above said guidelines framed by the Hon'ble Division Bench of this Court, there cannot be levy of damages under Section 14B of the EPF Act and Para 32A of EPF Scheme due to facing of SARFAESI proceedings. The Authority has to exercise its discretionary power and may impose damages and it is not mandatory. However, already for the same Writ petitioner, the Authorities have levied damages and the same was challenged before the Appellate Tribunal and the Tribunal reduced the damages from 100% to 10%. Therefore, by applying the same yardsticks for the present period, this Court is inclined to levy the damages to 10%. Therefore, the amount quantified by the respondent in respect of damages is reduced into 10%. As far as the interest is concerned, the Appellate Tribunal has passed a reasoned order and therefore, it is unaltered.

10. In view of the above discussions, this Court is of the opinion that this Writ petition has to be allowed in part as stated above.



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11. In the result, this Writ petition is ***partly allowed*** and the order passed by the Central Government Appellate Authority in EPFA No.478 of 2017 in EPFA No.478 of 2013 is modified to the effect that the ***petitioner has to pay 10% of the damages quantified by the Authority under Section 14B of the Employees Provident Fund Act*** and as far as interest is concerned, the Writ petition is ***dismissed***. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

21.07.2025

Index : Yes/No.
Speaking order/non-speaking order
mjs

To

The Assistant Provident Fund Commissioner (C & R),
EPF Organization Regional Office,
3, Rajaji Salai, Tambaram,
Chennai - 600 045.

P. DHANABAL, J.,

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