BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.1278 of 2013
and W.M.P.(MD)Nos.1 and 2 of 2013 & 6596 of 2022

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
No.1, Lady Doak College Road,
Chokkikulam, Madurai – 625 002. ... Petitioner

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minaiar, Core II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.

2.The Janakiram Mills Ltd.,
P.B.No.4, Srivilliputtur Road,
Rajapalayam, Virudhunagar District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order in A.T.A.No.744(13)2005 dated 02.11.2010 issued by 1st respondent and quash the same.

For Petitioner	:	Mr.A.John Xavier
For Respondents	:	Mr.E.Ilango for R2 R1 Tribunal

ORDER

This Writ Petition has been filed aggrieved by the order dated 02.11.2010 passed in A.T.A.No.744(13)2005 on the file of Employees Provident Fund Appellate Tribunal, New Delhi, whereby, the learned Tribunal having entertained the appeal filed under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, (hereinafter referred to as "the Act 1952) came to the conclusion that there was no intention on the part of the respondent No.2 herein to commit default in payment of the provident fund dues and accordingly, remanded the matter back to the primary authority with a direction to assess the liability at 22% inclusive of interest. It is aggrieved by the said order of remand, the petitioner approached this Court by filing the present Writ Petition.

2. A perusal of the impugned order would disclose that the basis for remanding the matter back in restricting the liability at the rate of 22% inclusive of interest is only on the ground that there was no intention on the part of the respondent No.2 in committing default in payment of provident fund dues. The said reason assigned in the impugned order is only unsustainable in the light of the law laid down by the Hon'ble Supreme Court in the case of ***Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organization*** reported in ***(2022) 4 SCC 516***. Therefore, the impugned order is liable to be set aside.

3. Be that as it may, the learned appellate Tribunal, having deferred with the view of the primary authority having decided to remand the matter back, restricted the scope of enquiry before the primary authority without assigning any reason. Absolutely there is no reason assigned in the impugned order to restrict the liability at the rate of 22% inclusive of interest.

4. In the light of the above, the impugned order cannot be sustained. At this stage, it is also necessary to notice that the very same issue has come up for consideration before a Full Bench of this Court in the case of ***Sun Pressing (P) Ltd. Vs Presiding Officer, EPF Appellate Tribunal*** reported in ***2024(4) CTC 449*** and the learned Full Bench has laid down certain guidelines at paragraph 39, which read as under:

> *"39.Therefore, following the principles reiterated by the Hon'ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-*
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> *(i) Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or*

furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(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.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona

fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x) The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to

pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

5. In the light of the above, the impugned order is set aside and the petitioner is directed to examine the matter afresh by duly taking into consideration the decision of the Hon'ble Apex Court in the case of ***Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organization*** reported in ***(2022) 4 SCC 516*** and the Full Bench of this Court in the case of ***Sun Pressing (P) Ltd. Vs Presiding Officer, EPF Appellate Tribunal*** reported in ***2024(4) CTC 449,*** as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order.

6. This Writ Petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.02.2025

Neutral Citation: Yes / No
Index : Yes / No

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To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minaiar, Core II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.

MUMMINENI SUDHEER KUMAR, J.

vsm

W.P.(MD)No.1278 of 2013

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