BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.14342 of 2021 and
WMP(MD) No.11284 of 2021

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office,
Chokkikulam,
Madurai – 625 002. ... Petitioner

Vs

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
C.G.I.T Cum Labour Court,
Chennai 6.

2.M/s. Dhanalakshmi Paper Mills Pvt. Ltd.,
Rep. by its Director D.Muthusamy,
No.1, Dhanalakshmi Mills Quarters,
Vilampatti, Nilakottai,
Dindigul 624219. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 1st respondent the C.G.I.T, cum EPF Appellate Tribunal, Chennai in EPFA-262/2018 (A.T.A.No./TN-A-71-2016) dated 01.04.2021, and quash the same by confirming the order passed by the Assistant Provident Fund Commissioner, Madurai Under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in his vide proceeding No.TN/RO/MDU/20181/M011/ PDC/LD/2016 dated 19.07.2016.

For Petitioner	: Mr.A.John Xavier
For R1	: No appearance
For R2	: Mr.Jerin Mathew

ORDER

The Assistant Provident Fund Commissioner, Employees' Provident Fund Organization, Madurai has filed this writ petition challenging the order passed by the EPF Appellate Tribunal in EPFA-262/2018 (A/TN.-71/2016), dated 01.04.2021, in and by which, the Presiding Officer of the Employee’s Provident Fund Appellate Tribunal, Chennai has reduced the damages levied on the second respondent herein, under Section 14B of Employee’s Provident Fund and Miscellaneous Provisions Act, 1952, from Rs.4,84,689/- to Rs.2,18,110/- and directed the second respondent Establishment to deposit the same.

2.The second respondent Establishment, namely, M/s.Dhanalakshmi Paper Mills Pvt Ltd., is covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act,1952 (hereinafter called the Act) and it was allotted with EPF code No. TN/20181. The second respondent Establishment remitted the EPF contribution for the period July 2010 and July 2011 to April 2013 belatedly. Therefore, the Assistant PF Commissioner has initiated an enquiry and passed an order, levying damages on 19.07.2016 and the same was challenged by the respondent Establishment, by way of an appeal before the Appellate Tribunal in EPF Appeal.No.262 of 2018. The EPF Authority, by its order dated, 01.04.2021, has partly allowed the appeal, modifying the damages levied under Section 14 B of the Act, to an extent of 45% i.e. Rs. 2,18,110/- and directing the Establishment to pay a sum of Rs. 2,18,110/- instead of Rs.4,84,689/- and the same is under challenge in this writ petition.

3.The learned Counsel appearing for the petitioner EPF Authority submits that the Appellate Tribunal has modified the order on the following grounds:-

(a) Since mensrea or actus reus being a necessary ingredient for levy of damage and /quantum thereof, the respondent was obliged to consider the circumstances, under which, delay occurred in remittance of the statutory contribution.

(b) The Adjudicating Authority, though cannot waive the damage in toto in view of 32B of the Scheme, could have imposed lesser amount to what has been prescribed under 32A.

(c) Section 14B of the Act itself speaks 'may recover' which necessarily speaks that adjudicating authority has got a discretion to exercise its powers in the special circumstances considering the financial position of the Establishment.

3.1.According to the learned Counsel, the Appellate Tribunal has failed to consider that the second respondent Establishment had not remitted the Provident Fund dues, within the stipulated period as mentioned in the Scheme and failure on the part of the second respondent Establishment in remitting the statutory dues, within the stipulated time, attracts levying of damages, under Section 14B of the Act. Therefore, the order of reducing the damages levied under Section 14 B of the Act has to be set aside.

4.There was no representation for the second respondent Establishment and therefore, this Court by its order dated, 04.09.2025, directed the petitioner to take a fresh notice to the second respondent. Though notice was served on the second respondent, there was no representation for the second respondent in the subsequent hearings. Therefore, this Court, by its order dated, 23.10.2025, appointed Mr. Jerin Mathew, learned counsel, who is having a rich experience, as a Counsel to defend the second respondent Establishment in this writ petition.

5.The learned Legal Aid Counsel for the second respondent Establishment submits that though the Appellate Tribunal has allowed the appeal on the ground of mensrea, the fact remains that the respondent Mill was on loss during the relevant period between 31.03.2011 and 31.03.2014. According to him, there was an accumulated loss to the tune of Rs.4.70 Crores for the financial year 2010 -2011 and there was a further loss of Rs.12.78 Lakhs as on 31.03.2013 and Rs.604 Lakhs as on 31.03.2014. He further submits that the Mill has been declared to be a sick industry and they have not even paid any salary to their workmen and other Staff. The learned counsel further submits that the respondent Establishment was closed on 31.03.2014, 28.02.2015, 01.10.2015 to till date. Therefore, according to the learned counsel, the Appellate Tribunal has come to the conclusion that there was no *mensrea* for the respondent Management for the delay in payment of contribution. It is only due to financial constraints, the Management has not paid the amount in time.

5.1.In order to substantiate his case, the learned counsel has relied upon the Judgment of the Honourable Division Bench of this Court in WA.No.1382 of 2014, dated 27.06.2023, wherein, the Division Bench has held as under:-

> *8. A reading of Section 7-Q of the EPF Act, 1952 makes it clear that interest will have to be paid by the Employer. The word used in Section 14- B of the Act, 1952 is 'may' and the discretion exercised by the EPFO Authority cannot be mechanically interfered with by the Tribunal, unless reasons given by the Authority are proper. In the light of Section 7L, the Tribunal is empowered to reduce or completely waive the damages that may be passed by the Original Authority. In this case, the Tribunal has exercised its discretion and passed the order. We have already made an observation in W.A.No. 2349 of 2022 dated 06.06.2023 that after introduction and amendment of Section 7I of the Act, the power of the Tribunal cannot be curtailed, as an appeal can be filed before the Tribunal against the Board's decision. Section 7I of the Act reads as follows:*
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> > *"7-I. Appeals to Tribunal - "(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or*

section 14B, may prefer an appeal to a Tribunal against such notification or order. (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

9. It is pertinent to point out here that as per the provisions of the EPF Act, 1952, the interest on the PF contribution is mandatory. At the same time, in respect of levy of damages, it is left to the discretion of the Authority to decide the percentage of amount payable by the Employer. Of course, such percentage will have to be decided based on the facts and circumstances of each case. The schedule rate mentioned in Regulation 32-A is only the Upper Limit and it does not mean that the Authority or the Tribunal will have to mechanically apply it.

10. In the result, taking into account the totality of the circumstances and in order to shorten the life of litigation, this Writ Appeal is disposed of, with a direction to the Employer to pay damages at the rate of 12.5% p.a

6.In reply, the learned Counsel appearing for the EPF Authority submits that the respondent Establishment is a Paper Mill covered under the EPF Act and also allotted with PF code. It is also an admitted fact that the second respondent Establishment has remitted the EPF contribution for the period from July 2010, July 2011 to April 2013, belatedly. Section 14 B of the EPF Act enables the Authority to conduct an enquiry and to levy damages for belated payment, if any. Accordingly, a notice for enquiry was issued to the second respondent, under Section 14 B of the Act. Enquiry was conducted on 31.03.2016, 21.04.2016, 17.05.2016 and 31.05.2016. The representative of the respondent Mill has also appeared for the proceedings, through its Senior Manager (HR)on 31.03.2016. Again, the Manager has appeared on 21.04.2016. However, he has not placed any materials before the Authority that the Establishment has suffered a financial loss, however, this ground has now been taken in this writ petition. The learned Counsel further submits that no material was placed by the second respondent Establishment for the so called financial loss. The Tribunal, on its own has taken into account the grounds raised in the appeal and also modified the quantum of damages by reducing it to 45%, by applying the principles laid down by the Honourable Supreme Court, in the case of ***Employees State Insurance Corporation Vs. HMT Ltd., and another,*** reported in ***AIR 2008 SC 1322***. According to the learned Counsel, the above said case is no longer be a good law, in view of the subsequent pronouncements of the Honourable Supreme Court in ***Horticulture Experiment Station Vs. Provident Fund Organization,*** reported in ***2022(4) SCC 516.*** The learned counsel has also relied on paragraph 19 of the said order, which is extracted as under:-

> *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 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."*

Therefore, according to the learned counsel, it is a civil liability as per the provisions under Section 14 B of the Act and the question of *mensrea* or *actus rea* does not apply to the civil liability.

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

8.Any default or delay in payment of EPF contribution by the employer can be imposed with a levy of damages as per the provision under Section 14B of the EPF Act and the same is extracted as under:-

14B. Power to recover damages.—

Where an employer makes default in the payment of any contribution to the Fund [, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985,subject to such terms and conditions as may be specified in the Scheme.]

9.As per the provision under the Act, opportunities were provided to the respondent Management on 31.03.2016, 21.04.2016, 17.05.2016 and 31.05.2016. One Mr.Chinnappan, the Senior Manager (HR) of the respondent Establishment has appeared for the enquiry, however, he remained absent for the other hearings, including the last hearing on 30.06.2016. The respondent Management has not placed any materials during the enquiry, conducted under Section 14B of the Act. Thereafter, in the appeal, the Management has taken a plea as under:-

i. It is further submitted that the accumulated losses of the Company was Rs.4.70/- Crores as at close of 31.03.2011 and 1278 Lakhs as at close of 31.03.2013 and 604 Lakhs as at close of 31.03.2014.
ii. Due to continuous losses, the Company became a sick and was not able to pay salary and wages to their workmen and staff.

iii. In view of the continuous losses the consequent constraints on finance there was a delay in remitting the contributions.
iv. It is submitted that the Appellant Establishment is under closure from 15.12.2014 to 28.02.2015 and from 01.10.2015 to till date.

10.Finally, the Tribunal has concluded the appeal by modifying the levy of damages under Section 14 B of the Act, to an extent of 45%, however, without any valid reasons. As pointed out by the learned counsel, the Tribunal has modified the above order on the ground that there is no *mensrea* or *actus rea*. Though, it is the discretion of the adjudicating Authority to levy maximum damages as provided under the Scheme 32A, in the absence of any materials before the EPF authority as well as the Appellate Authority that there was some financial loss to the second respondent Establishment during the relevant period, this Court is not inclined to accept this contention. It is to be noted that the Appellate Tribunal, by relying upon the case in ***Employees State Insurance Corporation vas. HMT Ltd and another***, reported in ***AIR 2008 SC 1322,*** has simply passed the impugned order with an observation that there was no *mensrea* for the respondent Mill for the belated payment of EPF contribution. However, in the subsequent Judgment of the Honourable Supreme Court in ***Horticulture Experiment Station Vs. Provident Fund Organization,*** reported in ***2022(4) SCC 516,*** the Honourable Supreme Court has held that *mensrea* or *actus rea* cannot be an element for imposing the penalty or damages for breach of civil obligations or liabilities.

11.In view of the above and in the absence of any material to substantiate that the second respondent Mill was facing some financial difficulties, during the relevant period, due to which, they could not paid the contribution, as claimed by the respondent, this Court is not inclined to accept the stand taken by the Tribunal in modifying the order of damages levied under Section 14B of the Act.

12.Accordingly, this writ petition filed by the EPF authority is allowed. The impugned order passed by the EPF

Appellate Tribunal in EPFA-262/2018 (A/TN.-71/2016), dated 01.04.2021, in modifying the levy of damages is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

13.This Court places its appreciation to the learned Legal Aid Counsel for his strenuous efforts in defending the case with the available materials. This Court directs the Legal Aid Services Authority to pay a sum of Rs.15,000/- to the learned Legal Aid Counsel for his earnest efforts to defend the case of the second respondent.

10.11.2025

Index:Yes
Internet:Yes
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To

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B.PUGALENDHI, J.

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W.P(MD)No.14342 of 2021 and
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