BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.10.2025

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.20801 of 2022

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

versus

M/s.A-1237 Kulalakundu Agricultural
Service Co-op. Society,
Kullalakundu (PO),
Nilakottai Taluk,
Dindigul District – 624 215. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the C.G.I.T, cum EPF Appellate Tribunal, Chennai, in EPFA 310/2017 (ATA 727(13)/11) dated 24.08.2021 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 proceedings No.TN/RO/MDU/20457/RO/circle/PDC/LO/2011 dated 27.09.2011.

For Petitioner : Mr.A.John Xavier
For Respondent : Mr.V.O.S.Kalaiselvam

ORDER

This writ petition is filed by the EPF Authority as against the order of the EPF Appellate Tribunal in EPFA 310/2017 (ATA 727(13)/11) dated 24.08.2021.

2.The EPF Authority has initiated proceedings as against the respondent Society under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as 'the Act'), for the belated payment of contribution for the period from March 2005 to February 2006. The respondent Society has appeared in the enquiry proceedings through a counsel and filed a statement for waiver of damages by producing their audit report. However, the EPF Authority, by order dated 27.09.2011, has levied damages under Section 14B of the Act and directed the respondent Establishment to pay a sum of Rs.52,595/-. As against the same, the respondent Establishment has preferred the above EPF Appeal before the Appellate Tribunal. The Appellate Tribunal has set aside the damages on the ground that there is no mens rea or actus reus for the delayed payment and that the Society has sustained cumulative loss for the year 2006 - 2007 amounting to Rs.1,47,30,406.80p, for the year 2007-2008 amounting to Rs.1,22,56,233.03p, for the year 2008-2009 amounting to Rs.1,25,80,835.18p and for the year 2009-2010 amounting to Rs.1,26,00,000.00. By referring the loss suffered by the Society, the Appellate Tribunal, by order dated 24.08.2021, has allowed the appeal filed by the respondent Society that the belated remittance cannot be said to be mens rea and actus reus on the part of the appellant and that the EPF authority failed to prove the said mens rea against the appellant. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the EPF Authority submits that the Hon'ble Supreme Court, in ***Horticulture Experiment Station, Coorge vs. Regional Provident Fund Organisation*** reported in ***(2022) 4 SCC 516,*** held that mens rea and actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities. In view of the ratio laid down by the Hon'ble Supreme Court, the order of the Tribunal cannot be sustained.

4.The learned counsel for the respondent, by referring to a Judgment of the Hon'ble Supreme Court in ***Employees State Insurance Corporation vs. HMT Ltd. and another*** reported in ***AIR 2008 SC 1322*** submits that a Coordinate Bench of the Hon'ble Supreme Court held that mens rea and actus reus are necessary ingredient to arrive at the damages. The decision of the subsequent orders of the Hon'ble Supreme court would not nullify the earlier order passed by the Hon'ble Supreme Court in ***HMT Ltd.'s*** case. He further submits that the Society has suffered a cummulative loss during the relevant period and that was considered by the Appellate Tribunal and there is no reason to interfere with the order of the Appellate Tribunal.

5. This Court considered the rival submissions made and also perused the materials available on record.

6. The respondent Establishment is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act and they were allotted EPF Code No.TN/MD/20457. The respondent Establishment has not paid the EPF contribution for the period from

March 2005 to February 2006. Therefore, a proceedings under Section 14B of the Act was initiated and damages were levied by order dated 27.09.2011 and the same was challenged by the Establishment before the Appellate Tribunal in EPFA 310/2017 (ATA 727(13)/11).

7.The Appellate Tribunal has found that there was a cumulative loss suffered by the Society on account of the policy decision taken by the Government of the Tamil Nadu for the waiver of loan etc.., and the members, who received the loan, did not repay the same and the amount so recovered against the borrowings was not sufficient to run the establishment and not even to meet the contingenies expenses. It is also noted that the Society was in a position not even to disburse the salary to their employees. Therefore, the appellate Tribunal has allowed the appeal on the ground that there was a cumulative loss for the Society and that there was no mens rea and actus reus in not paying the contribution in time.

8.The findings of the Tribunal to set aside the damages for want of mens rea or actus reus cannot be accepeted in view of the subsequent jdugment in ***Horticulture Experiment Station's*** case cited supra.

However, the tribunal has also taken notice of the financial condition of the society that there was cumulative loss for the year 2006 to 2010 as below:

> "The Society has sustained cumulative loss for the year 2006 - 2007 amounting to Rs.1,47,30,406.80p, for the year 2007-2008 amounting to Rs.1,22,56,233.03p, for the year 2008-2009 amounting to Rs.1,25,80,835.18p and for the year 2009-2010 amounting to Rs.1,26,00,000.00."

9.The request for waiver is due to the loss sufferred on account of the policy decision of the Government and also due to non-recovery of the loan from the borrowers. The Hon'ble Full Bench in ***Sun Pressings (P) Ltd, represented by its Managing Director Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi*** reported in ***2024-1- Writ.L.R.801*** has framed certain guideliness in this regard and the same is extracted hereunder:

> *"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:

(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."

10.In view of the guideliness and the reasons offered by the society, this court sets aside the impugned order passed by the tribunal. However, the matter is remitted back to the EPF Authority for fresh consideration by the EPF Authority in the light of the above guideliness.

11. This writ petition is allowed in the above terms. No costs.

15.10.2025

ogy / dsk
Index : Yes / No.
Internet: Yes / No.
NCC : Yes / No.

To

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

2.M/s.A-1237 Kulalakundu Agricultural
Service Co-op. Society,
Kullalakundu (PO),
Nilakottai Taluk,
Dindigul District – 624 215.

B.PUGALENDHI, J.

OGY / DSK

WP(MD) No.20801 of 2022

15.10.2025