BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.21128 of 2015
and
M.P.(MD) No.1 of 2015
and
W.M.P.(MD) No.20537 of 2023

M/s.TREC-STEP,
Thuvakudi,
Tiruchirappalli-620 015,
Tiruchirappalli District,
Through is Executive Director. ... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy-8. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records from the file of the respondent herein in No.TN/SRO-TRY/PDC/C-11/81025/7Q PROC/2014 dated 16.09.2015 and to quash the same.

For Petitioner : Mr.C.Karthikeyan

For Respondent : Mr.N.Dilipkumar

ORDER

This writ petition has been filed aggrieved by an order passed by the respondent bearing No.TN/SRO-TRY/PDC/C-11/81025/7Q PROC/2014 dated 16.09.2015 under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act 1952”).

2.1. The brief facts that are relevant for the disposal of this writ petition are as under:

2.2. The petitioner establishment was allotted EPF Code No.TN/81025 through proceedings dated 23.06.2010 with retrospective coverage from 01.09.1999 and thereafter, the petitioner remitted the entire provident fund contribution amount belatedly. Accordingly, the respondent passed orders dated 11.03.2015 under Section 14B of the Act 1952 as well as under Section 7Q of the Act levying damages and interest on the petitioner. Aggrieved by the order dated 11.03.2015 levying damages, the petitioner filed an appeal before the Appellate Tribunal and the same is pending for consideration.

2.3. Insofar as the order passed under Section 7Q of the Act 1952 claiming interest on the belated payment of the provident fund contributions for an amount of Rs.21,35,049/- is concerned, the petitioner disputed the said claim and approached this Court by filing W.P.(MD) No.9374 of 2015 and the said writ petition was disposed of by this Court by an order dated 15.06.2015. The said interest amount of Rs.21,35,049/- was claimed for the period commencing from 09/1999 to 07/2013. Out of the said period, there is no dispute about liability to pay interest with effect from 26.09.2008 to 07/2013. The dispute was only in respect of the period from 01.09.1999 to 25.09.2008.

2.4. In the light of the above, in terms of the order passed by this Court in the earlier writ petition, the petitioner paid the undisputed amount of Rs.8,00,000/- towards interest for the period subsequent to 25.09.2008.

Thus, the dispute in the present writ petition is only in respect of an amount of Rs.13,35,528 being the interest amount claimed for the period from 01.09.1999 to 25.09.2008.

2.5. The contest for the said interest by the petitioner is on the ground that prior to 25.09.2008, the interest amount being claimed now under Section 7Q of the Act 1952 was included in the damages payable under Section 14B and it is only after 25.09.2008, the interest portion is separated from the damages and fixed at 12% per annum on the delayed remittance of provident fund dues. Thus, it is contended that till 25.09.2008 from 01.09.1999, the damages were already claimed in an order passed under Section 14B of the Act 1952 by order dated 11.03.2015 and therefore, claiming interest for the said period again at 12% is amounting to collecting interest on the very same amount for the second time.

3. In support of the said contention, the learned counsel for the petitioner placed reliance on a decision of a learned Division Bench of the High Court of Delhi in the case of ***Systems and Stamping and another vs.***

Employees' Provident Fund Appellate Tribunal and others reported in ***2008 (5) L.L.N.266.*** In the said decision, the learned Division Bench held as under:

> *"The stand of the respondent, however, is that even after July 1, 1997 the defaulter is liable to pay "Total" mentioned in Col. 3 as well as interest at the rate of 12 per cent per annum under S. 7Q of the Act or 29 per cent 34 per cent 39. per cent and 49 per cent for the respective periods of default. This stand of the respondents cannot be accepted as it is contrary to their own circular, dated May 29, 1990. As per the respondent, defaulter will be made to pay interest under S. 7Q at the rate of 12 per cent even when he has paid damages as per the rate mentioned in Col. 3 which includes interest under S. 7Q. Thus he will pay interest under S.7Q twice. It is clear from the circular that once interest is chargeable under S.7Q of the Act, the defaulter should be asked to pay damages as per the percentage specified in Col. 1, that is, between 5 to 25 per annum depending upon the period of default. The third column mentions the total of the revised rate of damages and interest chargeable under S.7Q. Column 3 cannot be regarded as rate of damages*

after July 1, 1997, when interest became payable under S. 7Q of the Act.

Accordingly, the present appeals are partly with the direction to the Regional Provident Funds Commissioner to calculate the amount payable by the appellants for various periods of default in terms of the office memorandum, dated May 29, 1990, as has been explained above. Appeal disposed of accordingly."

4. The said decision of the Delhi High Court though was appealed against, but the Special Leave Petition is stated to have been dismissed by the Hon'ble Apex Court.

5. On the other hand, Mr.N.Dilipkumar, learned counsel appearing for the respondent contended that the view taken by the learned Division Bench in the case of ***Systems and Stamping*** *(supra),* was reversed by a Full Bench of the Delhi High Court in the case of ***Roma Henny Security Services Pvt. Ltd. vs. Central Board of Trustees, E.P.F Organisation, Through Asst. P.F.Commissioner, Delhi (North)*** reported in ***[2012 (135) FLR 799]*** by order dated 12th September, 2012. However, the said order of the learned Full

Bench, on appeal was remanded back for fresh consideration and the matter is still stated to be pending before the Division Bench of the Delhi High Court.

6. The impugned order was passed under Section 7Q of the Act 1952 claiming interest at 12% and the disputed period is from 01.01.1999 to 25.01.2008. The decision of the Delhi High Court is only dealing with the quantum of damages that can be claimed under Section 14B. As already noted above, admittedly, the petitioner has already filed an appeal against the order passed under Section 14B before the Appellate Tribunal and the same is pending. The interest that was claimed under the impugned order is under Section 7Q of the Act 1952, which is totally independent of the damages levied under Section 14B of the Act 1952. The petitioner is not disputing its liability to pay interest for the delayed remittance of the provident fund contributions, but the only contention is that the said interest amount is included in the damages that were levied under Section 14B by orders dated 11.03.2015. If that be the case, the grievance of the petitioner is charging the damages at excess rate than the liability of the petitioner. The liability of the

petitioner under Section 7Q of the Act 1952 is not disputed. If the petitioner is of the view that the petitioner was levied damages in excess by including 12% interest while charging the 12% interest under Section 7Q, it is for the petitioner to agitate the said claim in the pending appeal filed against the order passed under Section 14B of the Act 1952.

7. The decision of the learned Division Bench of the Delhi High Court relied upon by the learned counsel for the petitioner also specifically deals with the quantum of damages for which an establishment is liable. The said decision is nothing to do with the interest payable under Section 7Q of the Act 1952. Therefore, the impugned order needs no interference on the contention raised by the petitioner by placing reliance on the decision of the learned Division Bench of the Delhi High Court. If at all, the petitioner is of the view that the petitioner was charged again for interest which was already charged under Section 7Q of the Act 1952 while levying damages under Section 14B of the Act 1952, it is for the petitioner to agitate the same on the quantum of damages that are levied against the petitioner for the same period, i.e., from 01.09.1999 to 25.09.2008. Therefore, the impugned order cannot

be interfered with on the ground that the petitioner was levied damages by including the interest for the delayed payment at the rate of 12% while levying damages under Section 14B of the Act 1952.

8. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly, dismissed. However, it is left open to the petitioner to agitate all his claims in the pending appeal by placing reliance on the decision of the learned Division Bench of the Delhi High Court referred *supra* or otherwise in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.02.2025

NCC : Yes/No
Index : Yes/No
ABR

MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy-8.

W.P.(MD) No.21128 of 2015

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