
(1996) 06 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 8154 of 1987

Snap Tap Machine Accessories (India) (P) Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 6

Citation : (1996) 06 MAD CK 0023

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : Ashok Menon, for the Appellant; P. Narasimhan, for the Respondent

Judgement

S.M. Abdul Wahab, J.—This writ petition has been preferred by Snap Tap Machine Accessories (India) Private Limited, Madras-44, for a

writ of certiorari to quash order No. TN/SDC/10568/Accounts/87, dated June 5, 1987, of the respondent.

2. The Managing Director of the petitioner-company has stated in the affidavit filed in support of the writ petition as follows : The Employees"

Provident Funds and Miscellaneous Provisions Act, 1952, applies to the petitioner-company and she is aware that the employees" and employer"s

share of contribution as enunciated in Section 6 of the Act together with the administrative charges to be remitted by the employer within 15 days

of close of each month. She also stated that she is aware that u/s 14B of the Act, when an employer makes any default in the payment of any

contribution or in the transfer of accumulations required to be transferred or in the payment of any charges payable under any other provisions of

this Act, the Central Provident Fund Commissioner or any other such officer as may be authorised by the Central Government may recover from

the employer such damages, not exceeding the amount of arrears as it may think fit to impose.

3. In the affidavit, she has also stated that on January 13, 1987, notice was served upon the petitioner to show cause within 15 days as to why

damages as envisaged u/s 14B of the Act be not recovered from the petitioner herein in respect of provident fund contribution, family pension

contribution, administrative charges and deposit linked insurance contributions, for the period May, 1978 to February, 1979, July, 1979, to

August, 1979, October, 1982, to September, 1983, August, 1984, January, 1985, September, 1985, December, 1985, and February, 1986.

After the show-cause notice and the explanation an enquiry was also conducted. During the enquiry it was brought to the notice of the respondent

that there was a change in management and at that stage, the company was nearly bankrupt. Subsequently, the financial condition of the company

improved step-by-step. During 1984-85, the company was out of woods and thereafter, remittances have been made well within the due dates. It

was also contended that the respondent ought to have initiated proceedings levying damages much earlier. However, after rejecting various

contentions, the respondent has levied the damages at a sum of Rs. 28,633,40. Hence, the writ petition has been filed.

4. In the grounds set out in the affidavit also the petitioner has stated that the respondent ought not to have delayed the levy of damages for several

years as this has misled the petitioner into presuming that the delays had been condoned. There is also a plea of limitation. As the management was

changed and the new management developed the company, it was also entitled to the benefit of Section 16(1)(h) of the Employees' Provident

Funds and Miscellaneous Provisions Act, 1952. Another ground taken is that as a matter of fact (sic) the contributions were actually paid by the

petitioner though slightly delayed even without the respondent making a demand for the same. Another ground raised is that if the respondent had

chosen to initiate proceedings to levy damages from the date of first default or at least some time thereafter, the petitioner would not have been

lulled into thinking that the respondent is not desirous of claiming damages and would not be faced with such a stiff amount to be cleared towards

damages as on today. Yet another ground raised by the petitioner is that there could not be loss whatsoever to the beneficiaries under the scheme.

Further, it has not been laid down as to what use the damages that had been levied upon the petitioner are going to be put. Even though several contentions have been raised by the petitioner, no counter has been filed in this case.

5. After hearing both counsel for the petitioner and the respondent, I feel that the respondent ought to have been diligent in taking steps to recover damages earlier. It is seen from the chart enclosed to the impugned order dated June 5, 1987, that defaults have been committed from May, 1978.

In the first instance, default was from May, 1978, to February 1979. The remittance of the amount for the said period was on December 26, 1979. When there was a default to remit the amounts from May 1978, to December 1979, the respondent has not chosen to explain why he had kept quiet.

6. Again from December 26, 1979, to February 4, 1980, there was no remittance, of course the period is very short. However, the payment is only on September 6, 1980. Similarly, from October 14, 1980, to February 2, 1981, there was no payment. From February 2, 1981 to February 26, 1981 there was no payment. From October 11, 1982, to August 22, 1983, there was no payment, for the Account Nos. 1, 2 and 10. From September 26, 1984, to March 8, 1985, there was no payment. From the examples cited above and also from the chart it is clear that the petitioner has been paying the amounts with such intervals and yet there was no warning or even demand issued to the petitioner by the respondent.

7. It is true that as per the provisions of the Act, it is the duty of the employer to pay the contribution within the time and he is made liable to pay penalty by way of damage. At the same time we must also take notice of the lapses on the part of the respondent is an authority constituted under the Act to realise the amounts from the employers. It is not only the duty of the respondent to simply penalise the employer, after issuing the show-cause notice. The authority constituted under the Act, given a responsible duty, is expected to perform his duty promptly. From the facts narrated above, I am unable to see any promptness on the part of the respondent in this case. The respondent is entrusted with a public duty and he has to take suitable steps to safeguard and protect the interests of the employees. It

cannot be appreciated that he can keep quiet for any number of year and after some time according to his will and pleasure wake up and issue show-cause notice for levying penalty against an employer. Therefor, in my view, the respondent is also responsible in a way for the lapse on the part of the employer which has encouraged him to commit subsequent defaults.

8. The main and important point to be considered in this case is whether the respondent has to assess the damage before levying the penalty. In the impugned order the respondent has considered the points raised by the employer in the enquiry after show-cause notice. It is stated that the financial difficulties and the changes in management are not factors to be considered at all and such circumstance will not mitigate the damage to any extent. In paragraph 3 of the order, the respondent has stated that he applied his mind to all the relevant facts and has gone into the reasons stated by thee employer. After rejecting the main reasons given by the employer, he has embarked upon the statutory obligation on the part of the employer add the importance of paying provident fund promptly. It is also stated that because of the delayed remittances, the organisation forced to declare a lesser rate of interest. Therefore, according to him the loss suffered on account of the defaults would be recouped only by seeking recourse to Section 14B of the Act. He has also chosen to given the meaning of the word ""gamages"". But he has not uttered even a single word as to why he failed to discharge his statutory obligation by calling upon the petitioner to pay the contribution promptly. That apart, from a reading of the impugned order, I am not in a position to see what actually, there was the damage that has been caused to the organisation by the delayed payment by petitioner. At this stage, learned counsel for the petitioner vehemently contended that there is no necessity to asses or ascertain the damage at all. It the default is committed, it is open to the respondent to impose penalty. In support of his contention he has relied upon the decision in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, . The Supreme Court has considered in detail about the validity of the provisions contained in Section 14B of the Act and it has upheld it. By doing so, it has also considered the arguments advanced before the Supreme Court that there were no guidelines for the levy of penalty.

The Supreme Court has also repelled the contention that damages must have some correlation with the loss suffered as a result of delayed payment and the authority imposing damages must apply its mind to this aspect. Another contention that was not accepted by the Supreme Court is that the award of damage u/s 14B must be in essence, the pecuniary reparation for loss or injury sustained by one person through the fault or negligence of another. In paragraph 47, the word "damages" has been defined as follows :

The expression "damage" occurring in Section 14B is in substance, a penalty imposed on the employer for the breach of the statutory obligation.

The object of imposition of penalty u/s 14B is not merely "to provide compensation for the employees. We are clearly of the opinion that the

imposition of damages u/s 14B serves both the purpose. It is meant to penalise defaulting employer as also to provide reparation for the amount of

loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Section 6,

but at the same time it is meant to provide compensation or redress to the beneficiaries i.e., to recompense the employees for the loss sustained by

them. There is nothing in the Section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the

scheme. The word "damages" in Section 14B is related to the word "default". The words used in Section 14B are default in the payment of

contribution and, therefore, the word "default" must be construed in the light of paragraph 38 of the scheme which provides that the payment of

contribution has got to be made by the 15th of the following month and therefore, the word "default" in Section 14B must mean "failure in

performance" or "failure to act". At the same time, the imposition of damages u/s 14B is to provide reparation for the amount of loss suffered by

the employees.

9. Therefore, it is not correct to say that the Supreme Court has altogether eschewed the view that there must be assessment or determination of

the loss sustained by the department or Organisation. On the other hand, the word "reparation" for the amount of loss suffered by the employees is

an indication that there must be assessment or ascertainment of the damages. But, as we have seen earlier in the impugned order, the respondent

has not made any attempt to assess or ascertain the damages. Therefore, without actual assessment or determination of loss, the respondent cannot simply levy the penalty . Since in this case, there is no assessment or determination of loss sustained o by the organisation or department and as there is no application of mind at all on this aspect by the respondent, I am of the view that the entire order of the respondent has to be set aside.

10. The other point raised by counsel for the respondent is with reference to limitation. I find that there is no substance in the said argument

because there is no period of limitation prescribed under the Act for recovery of loss. However, since I have taken the view that the order has to

be aside for want of assessment or ascertainment of loss, I need not go into the question of limitation.

11. For the foregoing reasons, the writ petition is allowed. There will be no order as to costs.