(2014) 10 MAD CK 0304

In the Madras High Court

Case No : Writ Appeal Nos. 1250 to 1252 of 2014 and Connected MPs

The Coimbatore District APPELLANT

Vs

The Presiding Officer RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7Q

Citation : (2014) 10 MAD CK 0304

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. The appellant is aggrieved by the common order dated 10 April 2014 in W.P.Nos. 13213, 13214 and 28629 of 2011, dismissing the writ petitions challenging the orders passed by the Assistant Provident Fund Commissioner, Coimbatore determining the damages payable under Section 14B of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") on account of belated payment of contribution.

The facts:

2. The appellant is a Society registered under the provisions of the Tamil Nadu Co-operative Societies Act. The appellant failed to pay contribution under the Employees Provident Fund Act within the statutory period. There were belated payments in respect of the periods from April, 1997 to February 2002 (W.A.No. 1250/2014), from May 2002 to January 2006 (W.A.No. 1251/2014) and from February 2002 to September 2002 (W.A.No. 1252/2014) respectively. The second respondent passed orders dated 3 December 2013, 15 December, 2006 and 1 September 2005 directing the appellant to remit a sum of Rs.44,14,418/-, Rs.14,55,098/- and Rs.21,00,922/- respectively towards damages under Section 14B of the said Act. The said orders were challenged before this Court. This Court disposed of the writ petitions with a direction to consider the matters afresh. The second respondent once again considered the issues and confirmed the determination of penalty. The said orders were challenged before the first

respondent. The first respondent confirmed the orders, but however the rate of penalty was reduced to 22%. The said orders were challenged before the writ court.

3. The Employees Provident Fund Commissioner challenged the appellate orders independently. The learned Judge took up all the matters together and having found no valid grounds, dismissed the writ petitions. Feeling aggrieved by the said order, the appellant is before us.

Submissions:

4. The learned counsel appearing for the appellant contended that there was no mens rea and as such the statutory authority was not correct in directing the appellant to pay penalty. According to the learned counsel, there was a finding recorded by the statutory authority regarding mens rea. However, the said finding was ignored while directing the appellant to pay damages under Section 14B of the Provident Fund Act.

Discussion:

5. The second respondent initiated proceedings against the appellant on account of its failure to pay contribution under the said Act for the periods from April, 1997 to February 2002 (W.A.No. 1250/2014), from May 2002 to January 2006 (W.A.No. 1251/2014) and from February 2002 to September 2002 (W.A.No. 1252/2014) respectively. Before the second respondent, the appellant admitted the delay in remitting the Provident Fund Contribution.

6. Section 7Q of the Employees Provident Fund Act provides for payment of interest at the rate of 12% for the delayed period. Similarly, Section 14B of the Act provides for recovery of damages. The appellant has no case that before determining damages under Section 14B of the Act, notice was not issued. The statutory authority issued show cause notices to the appellant, and only after hearing them, orders under Section 14B were passed determining the liability at Rs.44,14,418/-, Rs.14,55,098/- and Rs.21,00,922/- respectively.

7. The appellant has now taken up a contention that there was no wilful default. Section 14B gives discretion to the authority to reduce or waive the damages 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. When it is made out that the contribution was not paid within the statutory period, the appellant cannot be heard to say that they are not liable to pay damages. Damages under Section 14B is statutory in nature. This aspect was considered by the learned Single Judge and the plea made by the appellant was rightly negatived. We do not find any reason to take a different view in the matter.

8. In the upshot, we dismiss the writ appeals. Consequently, the connected Mps are closed. No costs.