

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.1800/2010

Date of decision : 16.03.2010

M/S East India Transport Agency. Petitioner.
Through : Mr. Rajiv Shukla, Adv.

Versus

Employees Provident Fund Appellate Tribunal. Respondents.
Through : Mr. R.C. Chawla, Adv.

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* **HON'BLE MR.JUSTICE KAILASH GAMBHIR**

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported
in the Digest?

Kailash Gambhir, J. (ORAL)

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1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 28.1.2010 passed by the respondent no.1 thereby directing the petitioner to deposit 20% of the assessed amount within a period of one month from the date of the order. The petitioner also seeks directions to direct the respondent no.3 to refund the amount of

Rs.5,01,205.17/- which amount as per the petitioner has been illegally recovered from the account of the petitioner.

2. Mr. Rajiv Shukla, counsel for the petitioner, submits that the proceedings against the petitioner were initiated under Section 14-B of the Employees Provident Fund & Misc. Provisions Act, whereby the petitioner was assessed to pay an amount of Rs.30,19,120/- and Rs.10,72,078/- under Section 14-B and Section 7-Q of the said Act respectively.

3. Challenging the said order of the Assessing Officer, the petitioner preferred statutory appeal under Section 7-I of the Act and after hearing the said appeal, the Appellate Tribunal directed the petitioner to deposit 20% of the assessed amount within a period of one month. While admitting the said appeal, the Tribunal also stayed the operation of the order under challenge subject to deposit of the 20% of the assessed amount within a period of one month. Counsel further submits that the said order was passed by the learned Appellate Tribunal in the presence of the counsel representing the Department. The legal issue raised by the counsel for the petitioner is that the said condition of the pre-deposit to challenge the order under Section 14-B of the said Act is not envisaged under the Act. Counsel thus submits that the directions

given by the Appellate Tribunal to the petitioner to deposit 20% of the assessed amount as a pre deposit are ex-facie illegal. Counsel further submits that the respondent has also illegally recovered the said amount of Rs. 5,01,205.17/- from the bank account of the petitioner, although the operation of the impugned order was stayed by the Appellate Tribunal.

4. Mr. R.C. Chawla, Advocate appears on advance notice.

5. I have heard learned counsel for the parties.

6. This Court in the case of ***M/s. Old Village Industries Ltd.***

Vs. the Asstt. Provident Fund Commissioner Employees

Provident Fund Organization & Anr., 115(2004) DLT 510 took a view that the condition of pre-deposit can be directed only when an appeal is filed under Section 7-A of the Act and not where challenge has been made against an order passed under Section 14-B of the said Act. It would be relevant to refer the relevant para of the said judgment here:

"The power to waive or reduce the amount to be deposited is relatively to the amount determined by the Officer under Section 7A of the Act. In other words the pre-requisite of deposit of 75% of the demanded amount applicable to an order passed under Section 7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of Section 8(1) to the order passed under Section 7A. Such provisions are to be construed strictly and cannot be given a wider meaning so as to create a liability which is intended to be correct to the entertainment of an appeal. The liability to deposit arises in the situation strictly contemplated under the provisions of this section. There is nothing in the section so as to extend its application to an order passed under

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Section 14B of the Act. An employer has a right to prefer an appeal against an order under Section 14B, under Section 7(1) of the Act but the pre-condition of deposit for entertainment of such an appeal is not covered under Section 7-O of the Act. Thus, I have no hesitation in rejecting the contention of the respondents that it would be mandatory for the employer to deposit 75% of such amount before appeal can be entertained or even that there cannot be stay of recovery of the said amount by the Appellate Authority. The argument raised on behalf of the respondents would be untenable even for another reason that damage is the consequence of the demand raised under Section 7A of the Act. The provisions of Section 14B of the Act attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in the category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Such provisions being related to revenue would be construed strictly whether to the advantage or disadvantage of the person upon whom the liability is sought to be fastened. Once the provisions of Section 7-O does not include an appeal against an order under Section 14B then it would be in no way permissible to include such an order by implication or otherwise."

7. Hence, in the light of the above position, the impugned order directing the petitioner to deposit 20% of the assessed amount is therefore ex-facie illegal and the same is accordingly set aside. Yet another illegality committed by the respondent is that in utter haste they attached the bank account of the petitioner and had realized an amount of Rs. 5,01,205.17/- . The impugned order directing the petitioner to deposit 20% of the assessed amount subject to which the impugned order was stayed was passed by the E.P.F. Appellate Tribunal, on 28.1.2010 and just after about 4-5 days the said attachment order dated 2.2.2010 was passed. Indisputably, the order dated 28.1.2010 was passed by the Appellate Tribunal in the presence of the counsel representing the Department but still the

respondent proceeded to attach the account of the petitioner without verifying the fact as to whether the petitioner had complied with the said directions or had taken steps to challenge the said order. As per the counsel for the petitioner due intimation was sent to the respondent department intimating the factum of passing of the said order. Even if the said order was to be complied with by the petitioner then also the respondent at least should have waited for some reasonable time before taking the coercive step to attach the bank account of the petitioner.

8. Now since this court has taken a view that the order of the Appellate Tribunal directing the petitioner to deposit 20% of the assessed amount as a pre deposit is illegal, therefore, the respondent is directed to release the said amount of Rs. 5,01,205.17/- which amount was attached by the respondent Department from the bank account i.e. 005010200023870, Kolkata Main Branch of the petitioner. The respondent shall release the said amount in favour of the petitioner within a period of one month from the date of this order.

9. With these directions, the writ petition stands disposed of.

DASTI.

March 16, 2010
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KAILASH GAMBHIR,J