

Neutral Citation No. - 2023:AHC:225834

Court No. - 6

Case :- WRIT - C No. - 13087 of 2023

Petitioner :- M/S Continental India Private Limited

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Sharad Chandra,Sankalp Narain,Sharad Chandra

Counsel for Respondent :- A.S.G.I.,Jagdish Pathak,Udit Chandra

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. G.K. Singh, learned Senior Advocate assisted by Mr. Sharad Chandra, learned counsel for the petitioner, Mr. Udit Chandra, learned counsel for respondent nos.2 and 3 and Mr. Gautam Kumar Upadhaya, learned counsel for respondent no.1.

2. The petition has been filed by the petitioner with a prayer to quash the impugned orders dated 31.03.2023 bearing Nos.139811 and 139812 respectively passed on the same date by the Regional Provident Fund Commissioner-I, Regional Officer, Meerut whereby he has imposed a damage to the tune of Rs.8,91,69,116/- upon the petitioner as well as M/s Modi Rubber Limited under Section 14-B of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (herein after referred to as the "Act of 1952") and has also imposed interest on delayed payment under Section 7-Q of the Act of 1952 to the tune of Rs.4,28,71,452/- which has been levied on the petitioner as well as M/s Modi Rubber Limited, Modi Nagar, Ghaziabad.

3. Brief facts of the case are that the proceedings under the Act of 1952 were initiated by issuing summons under Section 14-B alongwith Section 7-Q of the Act of 1952 for belated remittance of contribution towards employees provident fund for the period 01.04.1996 to 16.05.2016 which was served upon the petitioner on 16.05.2016 despite the fact that the requisite amount in respect of contribution of employees towards the employees provident

fund had already been deposited in the bank account of Regional Provident Fund Department and there was no lapse on the part of the petitioner. Aggrieved by the aforesaid notice, a written submission dated 28.06.2016 was preferred by the petitioner, thereafter, a letter dated 01.07.2016 was preferred by the petitioner requesting the Provident Fund Commissioner to further implead M/s Modi Rubber Ltd. Modi Nagar, Ghaziabad and M.R.L. Employees Provident Fund Trust through its trustees in the present proceedings for ascertaining the relevant facts with regard to actual remittance, which was made of the contribution towards the employees provident fund in the year 2013-2014. The summons as served upon the petitioner on 16.05.2016 mentions about the illegal assessment and imposition of damages and interest. As already stated, a detailed written submission as well as an impleadment application was also moved by the petitioner.

4. The proceedings commenced before the Assistant/Regional Provident Fund Commissioner and hearing in the matter took place on several dates. During the pendency of the aforesaid proceedings, a letter dated 20.09.2017 was preferred by the petitioner requesting for providing certain information and documents and further mentioning that there was no delay in remittance of contribution towards the employees provident fund in as much as in the period from 14.06.2013 till 24.01.2014, sum to the tune of Rs.32,87,93,283/- has already been deposited in the bank account of the department and the said amount has already been realized on different dates that being 20.06.2013, 13.08.2013, 09.09.2013 and 17.02.2014. Some clarification was sought by the concerned officer to which a proper reply was submitted. Several letters were issued as requested by the petitioners to the parties concerned and ignoring the reply, the order impugned has been passed, hence the present petition has been filed.

5. A preliminary objection has been raised by learned counsel for the respondent nos.2 and 3 regarding maintainability of the writ, as there is an alternative remedy available in **Section 7-I of the Employees' Provident**

Funds and Miscellaneous Provisions Act, 1952. Placing reliance upon a judgment passed in the case of **M/s Arcot Textiles Mills Ltd. vs. The Regional Provident Fund Commissioner and others, report in 2013(16) SCC 1**, he submits that the delay in payment of dues and component of interest are to be determined after hearing the concerned establishment thus, it is a composite order passed under Section 7-A and Section 7-Q together. Such an order shall be amenable to appeal under Section 7-I of the Act of 1952. He emphasises that if an independent order under Section 7-Q is passed, the same is not appealable. In present facts of the case, both the orders whereby damage has been imposed under Section 14-B of the Act of 1952 as well as interest on delayed payment has been levied under Section 7Q, the same is a composite order, hence is appealable and further relying upon a judgment passed in the case of **Gaurav Enterprises vs. Union of India and Others, report in 2022(172) FLR 97**, he submits that mere passing two separate orders would not render order under Section 7-Q of the Act un-appealable. He further submits that in case proceedings under Section 7-Q and Section 14-B are initiated, the authorities are required to hear the employer. Thus, proceedings under Section 7-Q and 14-B which require hearing the employer are common proceedings and the orders passed in such proceedings has to be treated as composite order against which appeal lies under Section 7-I of the Act.

6. He has further placed reliance upon a judgment passed in the case of **Tamil Nadu Khadi and Village Industries Board, Represented by its Chief Executive Officer, Kuralagam, Chennai-600 108 vs. The Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation, Rajaji Salai, Tambaram, Chennai-600 045, reported in 2020(165) FLR 530** submitting that the disputed facts and issues raised with reference to calculation of damages or interest or otherwise cannot be adjudicated in a writ proceedings.

7. Lastly relying upon a judgment passed in the case of **Authorized Officer, State Bank Travancore and Another vs. Mathew K.C., reported in 2018 AIR**

(Supreme Court) 676, he submits that the normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if an alternative statutory remedies are available, except in cases falling within the well defined exceptions as observed in **Commissioner Income Tax and Others vs. Chhabil Dass Agarwal, 2014 (1) SCC 603** which is as follows :-

"15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

8. Summing up the arguments the learned counsel for the respondents submits that in the matter of levy of penal interest or damages under Section 14-B where a pure question of fact is involved, can be decided by the appellate authority only. Writ would not ordinarily be entertained except in extraordinary circumstances. In support of his submissions he has relied upon a judgment of **St. Michael's Hr. Sec. School, rep. By its Correspondent, Gingee 604 202, villupuram District vs. Assistant Provident Fund Commissioner (Compliance), Employees Provident Fund Organisation and Another.**

9. Placing reliance upon paragraph 20, 21 and 22 of the case of **M/s Arcot Textiles Mill Ltd. (supra)**, learned counsel for the petitioner submits that alternative remedy is not bar in case of violation of principles of natural justice, as while calculating the damages or interest, the employer ought to have been heard. In the present case, though a detailed reply has been

submitted by the petitioner but the same has not been considered while passing the orders impugned.

10. Arguing the case on merits, learned counsel for the petitioner submits that the summons to appear for hearing, issued to the petitioner, under Section 14-B of the Act for payment of interest and under Section 7-Q of the Act for belated remittances made during the period of 01.04.1996 to 16.05.2016. Emphasizing on page 136 (statement showing amount payable under Section 7-Q and 14-B has been annexed), wherein it has been stated that the petitioner was required to deposit Rs.30,61,94,534 on 15.04.2013, but the same has been deposited on 14.06.2014, i.e. after a delay of one year and two months.

11. Replying to the aforesaid summon, it has been clearly mentioned that the total amount of Rs.32,87,93,283/- has already been deposited by 28.01.2014. The details of the deposit have been placed on page 158 which is as follows :-

Sr. No.	Date of deposit	Amount (INR)
1	17.06.2013	31,83,00,000
2	26.07.2013	26,94,267
3	23.08.2013	45,98,460
4	28.01.2014	32,00,556
	Grand Total	32,87,93,283

12. Emphasizing on page 164, learned counsel for the petitioner submits that the payment so made by the petitioner has already been encashed by respondent authority on 28.01.2014, but there was delay in updating the accounts on the web portal by them, thus, there was no fault on the part of the petitioner and without considering the aforesaid details and the reply, the impugned orders have been passed, therefore, the orders impugned imposing damages and interest on delayed payment is unjustified and bad in the eye of

law, as the same has been passed in gross violation of principles of natural justice, in a mechanical and callous manner without considering the fact that though, the payment was timely made but the same was uploaded in the accounts after a delay. There is no finding in this regard, discussing about the averments regarding aforesaid details as mentioned in the representation, therefore, the impugned orders are liable to be set-aside.

13. Learned counsel for respondent nos.3 and 4 could not dispute the aforesaid fact that the specific detail as given in the representation of the petitioner regarding timely deposit of contribution but delay in uploading/updating the same by the respondent authority, while submitting a reply to the summons has not been considered in the orders impugned.

14. In view of the submissions as made by the learned counsel for the petitioner that a proper opportunity of hearing was not provided to the petitioner and the details regarding timely payment of the funds before the authority concerned as mentioned in the reply has not been considered, the same has been passed in violation of principles of natural justice, therefore, the writ petition is entertained.

15. In view of the above discussion, impugned orders are **quashed** and the writ petition is **allowed**.

16. The matter is remitted back to the respondent authority to decide the same afresh, in accordance with law, by reasoned and speaking order, within a period of **two months**, from the date of production of certified copy of this order, after considering the detailed reply of the petitioner regarding deposition of the amount and other aspects as averred in the representation and after providing proper opportunity of hearing to all the parties concerned.

17. The parties shall abide by final orders passed by the authorities concerned.

Order Date :- 28.11.2023

Kalp Nath Singh