IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.821 of 1997

==

M/S Md.Sayeed Firozuddin Biri Merchant, through Md. Firozuddin.

.... Petitioner/s

Versus

The Union of India & Ors

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. ANIL KUMAR SINHA, ADV.
For the Union of India: Mr. Rakesh Kumar Sinha, CGC.
For the Res. 2 to 4 : Mr. Prashant Sinha, Adv.
Mr. S.K.Sinha, Adv.
Mr.Kumkar Girendra Gaurav, Adv.

==

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-02-2015

Shivaji Pandey,J Heard counsel for the petitioner and the respondents.

In the present case, petitioner is challenging the order dated 23rd September 1996 (Annexure-22) and the order of assessment dated 25th January 1989(Annexure-12) whereby and whereunder the assessment has been made of Rs.32,78,636/-. The period under assessment in the present case relates to February 1980 to March 1981, April 1981 to June 1982, July 1982 to June 1986, January 1987 to March 1987 and September 1987 to January 1989.The petitioner is a private Limited company engaged in trade of manufacturing Biri.

Biris are rolled by home workers The Company used to supply raw materials to different persons, they used to carry it to their respective homes, they roll Biris and return the same to the Company.

A proceeding under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (for short, the 'Act') was initiated against the petitioner and other similarly situated companies engaged in the trade of manufacturing Bidis.

First of all claim was made by the Companies that they are independent workers and there is no relationship of employer and employee under

Section 2(f) of the Act.

In the present writ petition also, all the times the Company has resisted the applicability of Act with respect to persons who are rolling Bidis.

This issue is no longer res integra in view of judgment in M/s P.M.Patel and sons v. Union of India, reported in AIR 1987 SC 44**7** where it has been held that persons rolling Bidis in their respective homes are under the Act.

Same issue was raised in the case of S.K.Nasiruddin Bidi Merchant Ltd. Reported in (2001)2 SCC 612 and this Court in CWJC No. 4089 of 1998 has held the workers engaged in rolling Biri are covered under the Act.

As it appears that Section 7A of the Act proceeding was initiated against the present petitioner. The Regional Provident Fund Commissioner made assessment of Rs.32,78,636/- for the period, as aforesaid(Annexure-12).

That order was challenged in CWJC No. 7151 of 1989 and this Court by order dated 16th March 1990 (Annexure-14) stayed the operation of t he order subject to deposit of Rs.20,00,000/- and that order was also challenged before the Hon'ble Supreme Court in SLP No. 10867 of 1993(Annexure-16), notice was issued, stay was granted and ultimately SLP was dismissed.

The case was taken up and this Court in CWJC No. 7152 of 1989 rejected the plea of petitioner and held assessment to be correct but liberty was given if the petitioner has still grievance, he can approach the authority concerned.

In pursuance of this order, petitioner moved a review application before the Assistant Provident Fund Commissioner and there he raised the issue of waiver taking a plea the employer could not make deduction of employees contribution and the Company should be waived to deposit the employees' contribution.

The said plea was not accepted by the Assistant Provident Fund

Commissioner who dismissed the review petition vide order dated 17th September 1998, which led to the filing of the present case.

The order dated 28th July 1998 (Annexure-9) shows that a plea was taken in the present case that SLP No. 2951 of 1998 was pending relating to waiver. A Division Bench of this Court also decided the issue of waiver in LPA No. 403 of 1996. The Hon'ble Supreme Court affirmed the judgment of this court and rejected the plea of waiver in the case of M/s S.K. Nasiruddin Beedi Merchant Ltd. V. Central Provident Fund Commissioner and another in Civil Appeal No. 4285 of 1998.

This Court cannot make any comment on the merit of assessment as in the review application he has taken a plea of waiver that issue has al ready been decided by the Hon'ble Supreme Court that even if the employer has not made deduction the employees contribution cannot be waived to deposit the amount as it was mistake of the employer, the employees cannot be made suffer.

In the present case, petitioner has tried to open the issue that was not raised either before the Regional Provident Fund Commissioner or the Assistant Provident Fund Commissioner inter alia that the assessing authority has committed an error in deciding the amount of assessment without identifying the employees who were engaged in the rolling of Bidis so much so that there was different remuneration fixed during different period. As this issue was never raised before any authority, the assessment order has already attained its finality.

Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

Jay/-

U			