**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No.18196 of 2011
Date of decision : 10.03.2015

M/s H.M.M. Coaches Ltd.

...Petitioner

Versus

Employees Provident Fund Appellate Tribunal and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Sandeep Goyal, Advocate
for the respondent Nos.2 & 3.

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**AMIT RAWAL, J. (Oral)**

The petitioner has approached this Court with a prayer for issuance of a writ in the nature of certiorari for quashing of orders dated 01.02.2011 (Annexure P-6) and 16.01.2006 (Annexure P-4) passed by respondent Nos.1 and 3 i.e. Employees Provident Fund Appellate Tribunal and Assistant Provident Fund Commissioner under Sections 14-B & 7-Q i.e. penalty and interest of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as the 'Act').

It is matter of record that the petitioner was in default for not depositing the contribution for more than six months and accordingly, the Department/respondent raised the demand under Sections 14-B and 7-Q i.e. the imposition of penalty by way of damages and as well as interest not exceeding the amount of arrears as provided in the scheme.

Para 32-A of the Employees Provident Fund Scheme, 1952 provide recovery of damages for default in payment of contribution prior to the amendment. In case, there was default of more than six months, the rate of damages at the relevant point of time was 37% and as per Section 7-Q, the employer is liable to pay simple interest at the rate of 12% p.a. or such higher rate as specified in the scheme on the amount due from him under the Act i.e. from the date when the amount had become due till the date of the actual payment.

The Appellate Authority after noticing the contention of the parties to the lis found that company was in default in not depositing their contribution but rather noticed that the company had projected a financial problem and found that there was no infirmity in the order of Assistant Provident Funds Commissioner, whereby the amount of damages and interest to the tune of ₹4,23,984/- had been ordered to be deposited in the respective accounts along with simple interest at the rate of 12% p.a..

Mr. Harkesh Manuja, learned counsel appearing on behalf of the petitioner contends that since company was facing with financial problem and therefore could not deposit the share of the employees in time and therefore the default was not willful but unintentional.

Mr. Sandeep Goyal, learned counsel appearing on behalf of respondent Nos.2 and 3 contends that in case the company is found to be in default in not depositing the contribution the natural consequences of the penalty and as well as interest would necessary follow.

I have heard learned counsel for the parties and appraised the orders dated 16.01.2006 (Annexure P-4) passed by the competent authority and order dated 01.02.2011 (Annexure P-6) passed by the Appellate Tribunal confirming that findings rendered by the competent authority and am of the view do not suffer from any illegality, much less, perversity.

I am of the view that the authorities have concurrently held that company had defaulted in not depositing the contribution which was exceeding more than six months and accordingly the recovery of damages and payment of interest under Sections 14-B and 7-Q of the Act was inevitable.

This Court while issuing notice of motion stayed the operation of the impugned order subject to the direction to the petitioner to deposit 50% of the amount within one month.

Mr. Harkesh Manuja, learned counsel for the petitioner informs the Court that the petitioner company had complied with the interim order dated 27.09.2011. Since the petitioner company had defaulted in not depositing the contribution within a statutory period, the action of the authority is just & legal in imposing the damages and recover the same by way of damages & interest.

No fault can be found with the findings rendered by the competent authority and as well as by the Appellate Tribunal.

Accordingly, the impugned orders dated 01.02.2011 (Annexure P-6) & 16.01.2006 (Annexure P-4) are upheld.

The present writ petition do not fall within the realm of judicial review and, therefore, the same is, accordingly, dismissed.

**10.03.2015** **(AMIT RAWAL)**
*pawan* **JUDGE**