*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   **W.P.(C) 1085/2015**

%   Judgement pronounced on: 04.02.2015

V.B. SECRITY SERVICES ..... Petitioner

Through: Mr S.K. Gupta, Adv.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER ..... Respondent

Through: Mr Arvind Kumar Verma and Mr Abhinav Ashok, Advocates

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. Issue notice. Mr. Arvind Kumar Verma, Advocate accepts notice on behalf of the respondent.

2. Heard.

3. The petitioner in the present writ petition has challenged the order of Employees Provident Fund Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal') dated 31.10.2014.

4. In the present case, the respondent had issued a show-cause notice dated 24.05.2012 against the petitioner under Section 14B and 7Q of Employee's Provident Fund and Miscellaneous Provisions Act, 1952

(hereinafter referred to as the Act) for the period from February, 2009 to August, 2011.

5. On 08.05.2013, the respondent being quasi-judicial authority has passed the order under Section 14B and 7Q against the petitioner-Establishment and imposed the damages and interest upon it. On 24.10.2014, the petitioner had challenged the said order by way of appeal under Section 7-I of the Act before the Appellate Tribunal and the same appeal was registered as ATA No.1112(6)2014. It is submitted that on 31.10.2014, the Appellate Tribunal had admitted the appeal and simultaneously directed the petitioner to deposit Rs. 15,00,000/- with the respondent within four weeks. It is submitted that the said order of the Appellate Tribunal is against the settled principle of law. It is submitted that the pre-deposit is not required, if assessed under Section 14B of the Act in view of the various decisions of this Court. Reliance has been placed on ***M/s. Old Village Industries Ltd. v. the Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation & Anr.*** *2005 LLR 552* and also on ***H.K. Corporation vs. Assistant Provident Fund Commissioner***, *W.P.,(C) No.8737/2014,* decided on *10.12.2014.*

6. In ***M/s. Old Village Industries Ltd.*** *(supra)*, this Court has held as under:-

> *"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 order 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 7(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 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 a 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. Similar view has been taken by this Court in ***W.P.(C) No.8737/2014,*** (supra) and ***W.P.(C) Nos. 1148/2010 and 3176/2013*** decided on *24.02.20110 and 15.05.2013* respectively.

8. Learned counsel for the respondent has not disputed the law settled by this Court in the case of ***M/s. Old Village Industries Ltd.*** *(supra)*.

9. In view of the settled principle of law, the order dated 31.10.2014 of the Appellate Tribunal is modified to the effect that the appeal be heard by the Tribunal, without insisting upon the pre-deposit of Rs. 15,00,000/-.

10. In view of the above, the petition is allowed with no order as to costs.

CM No.1937/2015 (stay)

CM No.1937/2015 has become infructuous and the same is also disposed of.

DEEPA SHARMA
(JUDGE)

FEBRUARY 04, 2015
BG