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

%   <u>*Date of Decision: September 17, 2015*</u>

+   **<u>LPA 240/2014</u>**

M/S JHALANI TOOL (I) LTD.   .....Appellant
Represented by: Mr.Ravi Gupta, Sr.Advocate instructed by Mr.Aman Wachher, Advocate

versus

ASSISTANT PROVIDENT FUND COMMISSIONER FARIDABAD   .....Respondent
Represented by: Mr.R.C.Chawla, Advocate with Mr.D.Rajeshwar Rao, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>PRADEEP NANDRAJOG</u>, J.

1. The adage : '*A stitch in time saves nine*' could be the apt preamble to the present decision. Only if somebody had applied himself with a little care at the relevant time and put the stitch on time we would not have been called upon to put nine stitches.

2. The appellant company was registered with the Provident Fund Commissioner and used to deposit such amounts as were required to be deposited with the respondent concerning provident fund of its employees. As of the year 2001 a sum of ₹5.71 crores became due and payable by the appellant to the respondent. The details being as under:-

S.No.	Period	Amount	RRC No.	Date
1.	8/94 to 3/96	18366785	1008	16/5/97
2.	6/96 to 11/97	4562018	1125	6.4.2000
3.	12/97 to 4/98	4054282	-	-
4.	5/98 to 9/98	3456065	1126	6.4.2000
5.	10/98 to 1/99	3217870	1160	27.7.2000
6.	2/99 to 10/99	8359042	1164	13.9.2000
7.	11/99 to 6/2000	8827170	1165	9.1.2001
8.	11/2000 to 3/2001	3453956	1185	13.8.2001
9.	-	853613	72A	25.11.85
10.	6/83 to 4/84	46968	72B	30.7.87
11.	1/84 to 88-89	1988251	720	26.2.9
	Total	5.71 crores		

3. The demand as per serial No.1 to serial No.7 was towards provident fund liable to be deposited by the appellant and the demand at serial No.8 to serial No.11 was for damages levied under Section 14B of the Employees Provident Fund Scheme, 1952.

4. It appears that the demands were created by ex-parte orders. The reason was that the appellant was in financial distress. Since the year 1994 proceedings pertaining to a scheme of rehabilitation were pending before the Board of Industrial and Financial Reconstruction and since it was not possible to revive the appellant winding up proceedings have commenced.

5. When the demand in sum of ₹5.71 crores was raised the ex-management of the appellant approached the learned Company Judge of

this Court praying that the respondent be directed to review the ex-parte assessment orders. On February 23, 2005 the learned Company Judge noted that under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 a power of review was vested in the respondent and hence the application filed by the ex-management of the appellant was disposed of observing that a review could be sought of the ex-parte assessment orders.

6. As a matter of fact, proceedings under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 were initiated by the respondent from time to time noting that deposit of contributions due had not been made from August, 1994 to March, 2001 and the demand in sum of ₹5.71 crores was not created pursuant to a singular order, much less dated May 31, 2001. On said date the demand was raised.

7. The appellant, through its ex-management, thereupon filed an application dated March 13, 2005 seeking review, and in the application it did not mention the date of the order or orders if any passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Making a reference to an order passed by the learned Company Judge on February 23, 2005 it was prayed that all assessment orders passed under Section 7A resulting in a demand in sum of ₹5.71 crores be reviewed.

8. There being a threat of enforcement of the demand in sum of ₹5.71 crores, on March 24, 2005 i.e. immediately after filing the application referred to above in paragraph 7, the appellant filed W.P.(C) No.5389-92/2005 in this Court in which it was pleaded that the respondent be

restrained from taking any coercive steps till appellant's application dated March 13, 2005 was decided. The writ petition was disposed of on April 04, 2005 noting that application seeking review of the ex-parte assessment orders was pending adjudication. The respondent was directed to decide the said review petition by a reasoned order after hearing the appellant on April 20, 2005.

9. But as a matter of fact, on March 31, 2005 the respondent had already passed an order concerning the application dated March 13, 2005 filed by the appellant, holding that review had to be sought within 45 days of any order passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and hence the application was barred by limitation.

10. Since the appellant was not aware of the order dated March 31, 2005 and respondent did not inform the learned Single Judge of this Court that the review application had already been disposed of on March 31, 2005, W.P.(C) No.5389-92/2005 was disposed of on April 04, 2005. The respondent ought to have moved an application in the writ petition seeking modification of the order dated April 04, 2005. It did not do so. On the contrary it proceeded to comply with the order dated April 04, 2005 and gave a hearing to the appellant on April 20, 2005 with respect to the application seeking review of the orders passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and passed an order on April 26, 2005 dismissing the application seeking review, in which it was highlighted that the last order under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was passed on May 31, 2001. It was opined that

review sought after four years was barred by limitation. On merits it was observed that the assessment was not based on any presumption and was with reference to the records of the appellant which were inspected by the Area Enforcement Officer.

11. Against the order dated April 26, 2005 the appellant filed an appeal before the Employees Provident Fund Appellate Tribunal. The appeal was filed on the 58th day of the passing of the order dated April 26, 2005. The respondent took an objection that the appeal was barred by limitation, and for which plea the respondent took the stand that the application seeking review filed on March 13, 2005 had been rejected on March 31, 2005 and communication of said order was received by the appellant on April 15, 2005.

12. The Appellate Tribunal decided the issue of limitation in favour of the appellant and against the respondent because what was challenged before it was the order dated April 26, 2005 and period of limitation was 60 days. The appeal was filed on the 58th day.

13. Respondent proceeded to challenge the order dated March 05, 2013 passed by the Employees Provident Fund Appellate Tribunal holding that the appeal filed by the appellant was within limitation.

14. Vide impugned order dated February 12, 2014 the learned Single Judge has, after noting aforesaid facts, observed that the Appellate Tribunal ought to have considered the issue of limitation with reference to the fact that the respondent claimed that the communication dated March 31, 2005 rejecting the application dated March 13, 2005 was sent to the appellant and was to the knowledge of the appellant on April 05, 2005 and thereafter decide whether period within which the order passed

in review had to be challenged had to reckon with reference to the order dated March 31, 2005 being communicated to the appellant on April 05, 2005 or it had to be decided with reference to the order dated April 26, 2005 and for which the appellant has been permitted to challenge the order dated March 31, 2005.

15. The only stitch which was required to be put in time was to take note of the fact that the order dated March 31, 2005 is sans any reasons and thus would not stand the scrutiny of an order required to be passed by a quasi judicial authority. The order dated April 26, 2005 is a reasoned order. Further, by passing the order dated April 26, 2005, the respondent would be deemed to have withdrawn its earlier order dated March 31, 2005, and thus for purposes of appeal the order which would be liable to be challenged is the order dated April 26, 2005 and limitation has to reckon with effect from the date of said order, as has been reckoned by the Appellate Tribunal constituted under the Employees Provident Fund Act.

16. We note that learned counsel for the respondent attempted to rake up the issue of their not being in existence any assessment order dated May 31, 2001, and we note that the argument was being advanced by learned counsel for the respondent since learned counsel for the appellant kept on urging that the review sought was of the order dated May 31, 2001. As we have noted above, under different assessment orders demands were raised. In the review filed by the appellant the prayer is not made to review any particular assessment order. The prayer made is to review all assessment orders which cumulatively raise a demand in sum of ₹5.71 crores.

17. The appeal is allowed. Impugned order dated February 12, 2014 passed by the learned Single Judge disposing of W.P.(C) No.2165/2013 filed by the respondent directing the Appellate Tribunal under the Provident Fund Act to re-decide the matter pertaining to limitation is set aside. The order dated March 05, 2013 passed by the Employees Provident Fund Appellate Tribunal holding the appeal to be in limitation is restored. The Appellate Tribunal shall now proceed to decide the appeal which we find is A.T.A. No.518(16) 2005 on merits.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 17, 2015
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