IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5118 OF 2016
(Bhimrao T.Pawar Vs. The Assistant Provident Fund commissioner)

Mr.T.K.Prabhakaran, Advocate for the petitioner.
Mr.K.B.Choudhary, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/11/2016

PER COURT :

1. On 19/10/2016, I had passed the following order :-

"1. I have heard the learned Advocates for the respective sides for quite sometime.

2. It is specifically contended by the petitioner that the issue involved in this petition is as regards unpaid provident fund contribution for the period October 1997 to March 2003 and imposition of interest under Section 7Q and damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("1952 Act").

3. There is no dispute that the interest and damages cannot exceed 100% of the amount assessed under Section 7A of the 1952 Act.

4. By an earlier order passed by this Court, dated 25.2.2005 in Writ Petition No.5097 of 2004, the order of the PF authority, *dated 11.6.2004, under Section 7A as well as Section 7Q (Rs.10,50,801/-) was directed to be reviewed under Section 7B of 1952 Act. By order dated 7.1.2008, passed by the PF authority under Section 7B, which is the review provision, the amount of 7A dues was about Rs.1,50,000/- and the 7Q interest was Rs.53,147/-. As such, notwithstanding the passage of time, the damages under Section 14B on the 7A amount could be a maximum of Rs.1,50,000/-, which is equal to the 7A amount, considering the effect of paragraph 32A(1) of the Employees' Provident Fund Scheme, 1952, which was introduced by Act dated 26.9.2009, effective from 29.6.2008.*

5. Similarly, the amount of damages under Section 14B on the 7A amount of Rs.1,50,000/- could also be a maximum of Rs.1,50,000/-. Consequentially, even if it is assumed at this stage that the petitioner was liable to pay the maximum interest under Section 7Q and maximum damages under Section 14B in relation to the 7A amount of Rs.1,50,000/-, the total of Section 7Q and 14B would be a maximum of Rs.3,00,000/- and, therefore, the petitioner, prima facie, would be required to pay Rs.4,50,000/-. This is in relation to the period October 1997 to March 2003.

6. It appears from the record that the petitioner has, uptill now, paid an amount of Rs.3,78,280/- keeping in view that the 7A amount was already paid on 7.4.2005 and the 7Q amount of Rs.53,147/- was paid on 14.4.2008. So also an amount of Rs.25,133/- was paid by the petitioner on 28.1.2008. As the 7A *amount was deposited on 7.4.2005, the calculation of interest under Section 7Q and damages under Section 14B cannot be assessed after 7.4.2005.*

7. The petitioner has deposited Rs.2,28,280/- as 7A and 7Q amount. The damages, therefore, will have to be calculated on Rs.1,50,000/- (7A amount), only till 7.4.2005, when the 7A amount was deposited. It appears from the chart set out on page No.4 of the petition, that 1,50,000/- once again has been deposited by the petitioner on 16.4.2010. Maximum liability under Section 14B cannot exceed the 7A amount. The amount paid by the petitioner as on 16.4.2010 would be Rs.3,78,280/-, which prima facie closes the issue for the period October 1997 to March 2003. Therefore, prima facie, the amount assessed by the respondent / PF authority, below Chart Sr. No.3, on page No.4 and Chart 4 on page No.5 of the petition, appear to be unsustainable.

8. Shri Choudhary submits that he would recalculate the amount in the light of paragraph No.7 of his affidavit-in-reply, dated 10.10.2016 and would make a statement on the next date.

9. By consent of the parties, S.O. to 24.10.2016 as part heard."

2. Pursuant thereto, I have observed in my order dated 24/10/2016 in paragraph No.1 as under :-

"1. The respondent shall calculate the Section 7A and Section 14B payments only on the amounts concerning the period 10/1997 to 3/2003, which was subject matter of Section 7A proceedings. The authorities shall also take into account that Rs.1,50,000/- were paid on 11.6.2004 and remainder Rs.53,147/- were paid on 7.1.2008. As such, the calculations under Sections 7Q and 14B for the above mentioned period shall be made by the authority after taking into consideration the amounts paid on the respective dates."

3. I had considered the submissions of the learned Advocates for the respective sides. In the light of the conclusions drawn in the orders dated 19/10/2016 and 24/10/2016, reproduced as above, this petition is partly allowed by setting aside the impugned order dated 27/01/2016 and the proceedings are remitted to the respondent / authority on the following conditions :-

[a] The litigating sides shall appear before the respondent on 16/12/2016 at 11.00 a.m.

[b] The petitioner is at liberty to place on record a specific data with reference to the assessment period 10/1997 to 03/2003 thereby indicating the exact amounts paid / deposited and the dates on which such deposits were made.

[c] The respondent/authority shall hear the petitioner afresh and by keeping in view the facts recorded by this Court from paragraph No.3 to 7 in the order dated 19/10/2016 and the directions in paragraph No.1 of the order dated 24/10/2016

reproduced as above, and shall meticulously scrutinize the amounts deposited.

[d] The respondent is expected to ensure that the effect of Section 7(Q) and 14(B) shall be with reference to the delay in deposits / payments and the same shall not be computable after the deposits have been made.

[e] All contentions with regard to the applicability of Section 14(B) (Damages) are kept open so as to enable the respondent to consider the grievance of the petitioner that when the issue of 7-A assessment is being done for the first time, damages are not required to be imposed unless the conduct of the petitioner is deceitful or fraudulent.

[f] It is expected that the respondent/authority shall consider the above aspect and shall take the pains to deliver a well reasoned order in the light of the fact that this litigation between the parties for the assessment period 10/1997 to 03/2003 has been going on for almost 12 years.

4. Mr.Prabhakaran, learned Advocate for the petitioner submits that he is seriously contending that matters on remand from this Court are not viewed independently and are not decided independently because the competent authority is under the fear of facing a vigilance enquiry, if he arrives at a different finding than the one which he had arrived at initially. Things become more serious for the competent authority, if the earlier order is reversed.

5. Considering the above contention, I find it appropriate to observe that the competent authority is always at liberty and expected to consider the matter independently by strictly applying the provisions of the Act and it is expected that such authority should never perform its duty under the fear of a vigilance enquiry especially in matters of review or remand.

6. Considering the fact that prima facie it appears that the petitioner has deposited more amount than what is likely to be due under Section 7-A, 7-Q and 14-B, the amount deposited in this Court shall be returned to the petitioner alongwith accrued interest. Needless to state, after the competent authority decides the matter, if excess amount has been paid by the petitioner, the same shall be adjusted against future payments with interest, as is permissible under law.

(RAVINDRA V. GHUGE, J.)