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

CWP No.18762 of 2011
Date of decision: 22.10.2016

M/s Shri Bikaner Sweets & Workshop .... Petitioner

versus

Regional Provident Fund Commissioner & ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present: Mr. Om Parkash Sharma, Advocate
for the petitioner.

Sanjay Tangri, Advocate
for the respondent.

*****

P.B.Bajanthri, J.(Oral)

In the present writ petition, the petitioner has prayed for quashing the order dated 19/21.05.2009 (Annexure P-2) and rejection of his appeal before EPFAT vide order dated 14.06.2011 (Annexure P-6).

Learned counsel for the petitioner has submitted that before passing the order on 19.05.2009 (Annexure P-2) under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the Act'), the petitioner has not been heard. Consequently, the ex parte assessment of amount to be deposited a sum of ₹4,14,867/- ordered is without hearing the petitioner. Consequently, rejection of appeal preferred by the petitioner is liable to be set aside.

On the contrary learned counsel for the respondent has vehemently contended that the petitioner has been provided sufficient opportunity to represent their case on 06.04.2009, 20.04.2009, 27.04.2009 and 04.05.2009. Thus, sufficient opportunity has been given to the petitioner to present their case but the same has not been utilised by the petitioner. Consequently, there is no infirmity in the order dated 19/21.05.2009 (Annexure P-2) passed under Section 7A proceedings. Consequently, the Tribunal order dated 14.06.2011 (Annexure P-6) passed in appeal is also a valid order.

I have heard learned counsel for the parties.

Since 7-A proceedings under the Act is ex parte proceedings, consequently, the order dated 14.06.2011 passed by the Appellate Tribunal is also not heard on merits. Therefore, the order dated 19.05.2009 and 14.06.2011 are to be set aside and the matter is to be remanded back to the Assistant Provident Fund Commissioner/competent authority to decide 7-A proceedings afresh. The petitioner is directed to appear before the Assistant Provident Fund Commissioner/competent authority on 22.12.2016. The Assistant Provident Fund Commissioner/competent authority is directed to provide three opportunities to present the petitioner's case and the petitioner or legal representative of the petitioner be heard in the matter and proceed to pass an order under Section 7-A proceedings of the Act within a period of four months from the date of appearance.

The matter relates to the order of 2009 regarding payment of EPF amount for the period 2004-09 and it has been determined as ₹4,14,867/-. The petitioner is directed to deposit the said amount within a period of two months from today. After decision of the 7-A proceedings afresh by the Assistant Provident Fund Commissioner if the petitioner is found liable to pay ₹4,14,867/- then the EPF Department is liable to recover the interest as well as damages under the statutory provisions for the said period. The same is permitted after giving due notice to the petitioner. If the petitioner fails to deposit the said amount within a period of two months, it is deemed that the earlier 7-A proceedings is upheld and the respondents are directed to proceed in accordance with law. If there is any difference in determination of amount in the fresh 7-A proceedings then the same shall be adjusted accordingly.

The present petition stands disposed of.

22.10.2016 **(P.B.Bajanthri)**
sonia **Judge**

1.Whether speaking/reasoned? *Yes/No*

2.Whether reportable? *Yes/No*