IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17498 of 2012 (O&M)
Date of Decision : 8.11.2016

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M/s R.K. Trading and Rice Mills
................Petitioner
vs.

Regional Provident Fund Commissioner,
Punjab and Haryana, Chandigarh & others ....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Pritam Saini, Advocate for the petitioner

Mr. Sanjay Tangri, Advocate for respondents No. 1 & 2.
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P.B. Bajanthri, J.

In the present petition, the petitioner has assailed the proceedings under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter for short referred as 'the EPF Act'), dated 3.10.2007 vide Annexure P-4 and order dated 25.8.2011 passed by the Employees' Provident Fund Appellate Tribunal, vide Annexure P-11.

2) The petitioner is a partnership firm named as M/s R.K. Trading and Rice Mills, which was established in the year 1980. The petitioner entered into lease agreement with M/s Shiva Trading Company to run the rice mill of the petitioner for running sheller/shella plant on 1.8.1997 for a period of two years (from 1.8.1997 to 31.7.1999). Once again the rice mill of the petitioner was leased out to M/s Shiva Trading Company on 25.8.2003 for a period

of 11 months (from 25.8.2003 to 31.7.2004) vide Annexures P-1 and P-2, respectively. Further petitioner entered into lease agreement with M/s J.K. Enterprises on 4.4.2005 till 31.7.2007.

3) In this background employees' provident fund which was not paid for the period from July 2000 to February 2001 and June 2002 to April 2005 by the petitioner and lease holder. The EPF Department issued a show cause notice as envisaged under Section 7-A of the EPF Act, to the petitioner on 29.11.2006 asking the petitioner to appear on 12.12.2006. The petitioner contends that notice was not served on the petitioner.

4) For the purpose of determination of dues for the period from July 2000 to February 2001 and June 2002 to April 2005, EPF Department held an enquiry. The matter was heard on 12.12.2006. Thereafter on 7 occasions matter was heard. For want of proper assistance of the petitioner in not furnishing required records, the matter could not be decided on merit. In other words, the petitioner could not produce necessary material to determine the provident fund dues for the aforesaid period. Consequently, the EPF Department summoned the District Food and Civil Supplies Controller, Jalandhar to provide details of the employer. The Auditor of District Food and Civil Supplies Controller, furnished certain details. Based on such details, EPF /Department proceeded to determine the dues of provident fund to the tune of Rs.6,29,544/- which are to be paid jointly and severally by the petitioner, M/s J.K. Enterprises, M/s Shiva Trading Company and M/s Sneha Agro Tech. Such a

determination was subject to the provisions of Sections 7 Q and 14-B of the EPF Act and also subject to provisions of Section 7-C of the EPF Act. It was passed on 7.10.2007 vide Annexure P-4.

5) The petitioner is stated to have submitted representation against 7-A proceedings. The same was not considered. Thereafter, EPF Department proceeded to issue arrest warrants under the provisions of EPF Act, which was subject matter before this Court including 7-A proceedings. This Court disposed of CWP No. 2168 of 2009 on 9.3.2010 holding that the petitioner has alternative remedy of appeal before the Appellate Tribunal under Section 7 (1) of the EPF Act. Since petitioner has not availed such remedy CWP was disposed of while petitioner was permitted to file appeal before the Appellate Tribunal with a further observation that appeal should not be rejected on the ground of limitation. Thereafter, the petitioner approached the Appellate Tribunal. The Appellate Tribunal rejected the petitioner's appeal on 25.8.2011. Thus the petitioner has questioned the validity of 7-A proceedings, as well as rejection of his appeal by the Appellate Tribunal in the present petition.

6) Learned counsel for the petitioner submitted that the rice mill is a partnership firm, which was leased out to M/s Shiva Trading Company, M/s Sneh Agro Tech and M/s J.K. Enterprises. For the period of assessment of provident fund M/s Shiva Trading Company was running the rice mill under the lease agreement. Therefore, determination of EPF amount to the tune of Rs.6,29,544/- and consequently, rejection of appeal by the Appellate Tribunal are

contrary to the facts and it was further contended that under Section 17-B of the EPF Act, lessee owes the responsibility of paying provident fund amount and not the lessor (petitioner). Therefore, the petitioner is not liable to pay any EPF dues.

7) Learned counsel for the petitioner relied on decision of Madras High Court reported in ***Neyveli Lignite Corporation Ltd. vs. Regional Provident Fund Commissioner, Madras and another 1998 (11) LLJ 159*** in which it is held that transferee is liable for payment of EPF dues. Therefore the petitioner – lessor being owner of the premises cannot be fastened with any liability arising out of the acts of omission and commission, if any, by the lessee during the period when the premises were leased out to the lessee.

8) The counsel for the respondents submitted that lease agreement entered between the parties are not registered under Section 17 (1) D of the Registration Act, 1908. Consequently, any reliance on Annexures P-1 to P-3 agreement, is not tenable. Thus the petitioner is liable to pay the determined amount under Section 7-A of the EPF Act. It was further submitted that dispute is relating to determination of dues for the period from 7/2000 to 7/2004 and 8/2004 to 03/2005, whereas the agreement entered into between the petitioner - M/s R.K. Trading and Rice Mills and M/s Shiva Trading Company on 1.8.1997 is for a period of two years from 1.8.1997 to 31.7.1999. The second agreement between the above parties is for the period from 25.8.2003 to 31.7.2004 and further entering lease agreement between petitioner and M/s J.K. Enterprises is from

14.4.2005 to 31.7.2007. The determination of EPF dues is with reference to the above period. The petitioner is liable to pay EPF dues from 7/2000 to 24.8.2003 till 2nd lease agreement entered between the petitioner and M/s Shiva Trading Company from 25.8.2003 to 3.4.2005 for about 8 months EPF dues are to be paid by M/s Shiva Trading Company and from 4.4.2005 to 31.4.2005 liability is upon M/s J.K. Enterprises. In view of the above facts and circumstances, the petitioner is liable to pay EPF amount determined under 7-A proceedings. It was further contended by learned counsel for the respondents that except status employer during the lease period nothing has been changed so as to contend that petitioner is not liable. It is for M/s Shiva Trading Company, M/s J.K. Enterprises etc., for the reasons that the employees employed by the petitioner were not discontinued. In support of 7-A proceedings order and Appellate Tribunal's order, learned counsel for the respondents cited decision of the Calcutta High Court reported in ***Dalgaon Agro Industries Ltd. vs. Union of India 2005 (3) LLJ 356***. He relied on para 53 of the judgment and further he relied on Supreme Court decision reported in ***Mcleod Russel India Limited vs. Reg. Provident Fund Commissioner, Jalpaiguri & others in Civil Appeal No. 5927 of 2014*** decided on 2.7.2014 (Para 6, 9 and 10), so as to contend that the petitioner is liable to pay the determined amount under Section 7-A proceedings.

9) Heard learned counsel for the parties.

10) Learned counsel for the petitioner has relied on ***Neyveli***

Lignite Corporation Ltd.'s case (Supra). The said decision is not applicable to the present case for the reasons that 7-A proceedings have been drawn by the Assistant Provident Fund Commissioner and determined the amount and also held that petitioner and others are jointly and severally liable to pay the determined EPF amount. Therefore, the determination of EPF amount is in accordance with Section 17-B of the EPF Act.

11) Learned counsel for the respondents – EPF Department submitted that the petitioner has not registered the lease agreement under Section 17 (1) D of the Registration Act, 1908. Therefore, the petitioners contention that lessee is liable to pay is not tenable. The said contention cannot be accepted, for the reasons that under 7-A proceedings, the Assistant Provident Fund Commissioner has already determined the liability of the lessor and lessee as jointly and severally and complied Section 17-B of EPF Act. The decisions cited by the respondent – EPF Department in ***Dalgaon Agro Industries Ltd.'s case (Supra)*** and ***Mcleod Russel India Limited's case (Supra)*** are not relevant for deciding the present case for the reasons that there is compliance of Section 17-B of the EPF Act by the Assistant Provident Fund Commissioner, while drawing 7-A proceedings. Therefore, the cited decisions are not relevant.

12) The Assistant Provident Fund Commissioner while drawing proceedings under Section 7-A of the EPF Act, has perused the period of determination of EPF dues namely, 7/2000 to 2/2001 and 6/2002 to 4/2005 and the agreement between the petitioner – M/s

R.K. Trading and Rice Mills and M/s Shiva Trading Company is for the period from 1.8.1997 to 31.7.1999 and 2nd spell of lease was with M/s Shiva Trading Company was for the period from 25.8.2003 to 31.7.2004 and further lease agreement with M/s J.K. Enterprises is w.e.f. 14.4.2005 to 31.7.2007. Therefore, the Assistant Provident Fund Commissioner has determined the total EPF amount for the period from 7/2000 to 2/2001 and 6/2002 to 4/2005 and determined jointly and severally as per Section 17-B of the EPF Act. In other words, determined amount of Rs.6,29,544/- has not been apportioned among petitioner and lessees with reference to the period the rice mills was run by either of the petitioner, lessees. In other words, the Assistant Provident Fund Commissioner while passing the order dated 3.10.2007 should have determined the amount in so far as petitioner is concerned for the period from 7/2000 to 24.8.2003 and the remaining period from 25.8.2003 to 3.4.2005 for about 8 months by M/s Shiva Trading Company and from 4.4.2005 to 30.4.2005 M/s J.K. Enterprises, for the reasons that rule 17-B states that lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution. Therefore, under 7-A proceedings, determined amount of Rs.6,29,544/- has to be apportioned among the petitioner, M/s Shiva Trading Company and M/s J.K. Enterprises. The same has not been complied. Consequently, the order dated 3.10.2007 passed by the Assistant Provident Fund Commissioner and order dated 25.8.2011 passed by the Appellate

Tribunal are liable to be set aside. Ordered accordingly. Cited decisions by the petitioner and respondents are distinguishable on facts of the present case, like in the present case lessees have not changed the employees. EPF Department have not quantified the statutory liability of the lessor – petitioner and lessees with reference to the dues period viz., July 2000 to February 2001 and June 2002 to April 2005.

13) In view of above facts and circumstances, the matter is remanded to the Assistant Provident Fund Commissioner/competent authority to re-determine PF dues of the petitioner and lessees after due notice to the parties and determine the apportioned amount, within a period of 4 months from today. In the meanwhile, the petitioner's liability towards payment of provident fund is for the period from July 2000 to 24.8.2003 which is the major portion. Therefore, the petitioner is directed to deposit a sum of Rs. 5 lacs with the EPF Department. Such deposit of money would be subject to passing of fresh order under 7-A read with 7-B proceedings, as well as, passing orders to say interest and damages under the statutory provisions of the EPF Act. The petitioner is directed to remit a sum of Rs.5 lacs with the EPF Department within a period of two months from today.

(P.B. Bajanthri)
Judge

November 8th, 2016
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No