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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 107 of 2012

Regional Provident Fund Commissioner, Regional Office, Chhattisgarh, Block-D, Scheme No.32, Indira Gandhi Vyavsaik Parisar, Pandri, Raipur (CG).

---- Petitioner

Versus

1. Grasim Cement (Unit of Grasim Industrial Ltd.) PO Grasim Vihar, Raipur, Chhattisgarh.
2. Employee Provident Fund Appellate Tribunal at Delhi through the Registrar, Scope Minar Core II, 4th Floor, Laxmi Nagar District Center, Laxmi Nagar, New Delhi-110092.

---- Respondents

For Petitioner : Shri Pradeep Saxena, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/02/2017

1. The present petition under Article 226-227 of the Constitution of India has been preferred assailing the order dated 04.05.2010 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in Case No.ATA No.116(8)2003.
2. The brief facts of the case is that, the respondent No.1 establishment is involved in the business of manufacturing Cement having its factory at Ravana. Manufacturing process of the respondent No.1 establishment started on 29.03.1995. The strength of the employees under respondent No.1 was 1025. The Enforcement Officer of the petitioner inspected the respondent's unit on 24.06.1995 and issued a show cause notice to comply with the

provisions of Employees Provident Funs Act, 1952 (in short, the Act). The stand of the Enforcement Officer was that the unit was an extended unit of one M/s Grasim Industries Ltd., Nagda (MP). The contention of the Enforcement Officer had clubbed the two units as one entity and since the unit of M/s Grasim Industries had already an establishment which was covered under the provisions of the Act, there was no reason why the respondent No.1 establishment should not comply with the provisions of the Act.

3. The respondent No.1 entered appearance and submitted a detailed reply to the show cause notice and finally an order was passed on 11.02.1998 allotting separate code to the respondent No.1 establishment for covering its employees engaged therein. Meanwhile, the respondent No.1 voluntarily made contribution of its employees w.e.f. 22.09.1997 on 11-12.03.1998. The respondent No.1 also challenged the applicability of the clubbing of two units before the respondent No.2 authority which remanded the matter back to the petitioner for a fresh adjudication. The petitioner issued fresh notice for levying interest and damages under the provisions of Sections 7Q and 14B of the Act. The respondent again contested the matter and contended that there was no delay on their part as immediately after the petitioner alloted the code to the respondent No.1, payment was made by it.

4. The petitioner initially proceeded under Section 14B against the respondent No.1 vide order dated 21.01.2003. It is this order which was challenged by the respondent's establishment before the

appellate Tribunal seeking for quashment of the order on the ground that the respondent's establishment was not entitled for making any payment for the period from 1995 to 1998 in accordance with provisions of Section 16D of the Act as it their existed as the plant was having the infancy protection of a new establishment as provided under the statutes. The appellate Tribunal vide impugned order dated 04.05.2010 has allowed the appeal of the respondent's establishment relying upon the decision of Supreme Court in case of S.L. Srinivasa Jute Twine Mills (P) Ltd. Vs. Union of India & Another, reported in 2006 (2) SCC 740, which is under challenge before this court.

5. The contention of the learned counsel for the petitioner is that the order of the Tribunal is bad in law to the extent that once when the respondent No.1 establishment has voluntarily contributed EPF of its employees w.e.f. 22.09.1997, the only aspect which ought to be seen by the Tribunal was whether the contribution was made within the period specified under the Act or not. In case if it is found that the contribution has been made belatedly, then the provisions of interest and damage would automatically apply. The petitioner does not dispute the fact so far as entitlement of the respondent's establishment of its infancy protection. All that the petitioner's contention was that since there was a voluntary contribution made by the respondent, it ought to have been made within the stipulated period failing which the provisions of law would automatically become applicable and therefore, the interest and penalty under

Sections 7Q and 14B of the Act was rightly imposed by the petitioner's establishment. Therefore, the impugned order deserves to be set aside and quashed.

6. At this juncture it would be relevant to refer to the judgment of the Supreme Court in case of S.L. Srinivasa Jute (Supra). In the said judgment, the Supreme Court in para 18 has held as under :

> “18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.(See Keshvan Madhavan Memon v. State of Bombay AIR 1951 SC 128).But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis'. In the words of Lord Blanesburg,
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> > "provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." (See Delhi Cloth Mills & General Co. Ltd. v. CIT, Delhi).
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> "Every statute, it has been said", observed Lopes, L.J.,
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> > "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect."(See Amireddi Raja Gopala Rao v. Amireddi Sitharamamma AIR 1965 SC 1970).
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> As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid, (1886) 31 Ch D 402). In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh (AIR 1989 SC 1933). The above position has been highlighted in "Principles of Statutory Interpretation" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474 and 475).”

7. It is also pertinent to take note of the provisions of law as it stood on

the date when the first notice was issued i.e. 30.05.1996 (Annexure P/2). Section 16 of the Act which stood amended in the year, 1998 read as under :

> "16(1)(b) to any other establishment belonging to or under the control of the Central Government or the State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefit; or
> (c) to any other establishment set up under any Central Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or
> (d) <u>to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been set up.</u>"

8. A plain reading of provisions of Section 16(1)(d) of the Act clearly enumerates the fact that any newly set up establishment, until the expiry of a period of three years from the date on which such establishment was set up, shall not be liable to comply with the provisions of the Act.

9. Indisputably, in the instant case, the respondent's establishment started functioning w.e.f. 29.03.1995 and therefore, for initial period of three years i.e. up 28.03.1998 the respondent's establishment would have been entitled for the infancy protection. In case if the respondent would not have paid any contribution during the said period, they were legally protected from not paying the said contribution. Only because subsequently the respondent No.1 has voluntarily made contribution of its employee w.e.f. 22.09.1997 by itself would not dis-entitle the respondent No.1 establishment the infancy protection which they were otherwise entitled for till

28.03.1998.

10. Thus, for an act which the respondent No.1 has voluntarily acted upon, they cannot be penalized for alleged delay in making of the contribution for the reason that under the statute itself they are not required to make any contribution during the said period and if they have voluntarily done so, they cannot be penalized for the act.

11. The Supreme Court in case of S.L. Srinivasa Jute (Supra) has clearly held that what the establishments was enjoying at the time of its establishment, cannot be taken away by a subsequent amendment unless the amendment itself specifically enumerates of it being applicable with retrospective effect. In the instant case, the amended act does not make the provisions of law automatically applicable retrospectively.

12. For the aforesaid reasons, this court is of the opinion that no strong case has been made out for interference with the impugned order passed by the respondent No.2 authority.

13. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/
(P.Sam Koshy)
Judge

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