IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9718 OF 2015

Central Board of Trustees .. Petitioner
Vs.
The Malegaon Co-op. Spinning
Mill Ltd. .. Respondent

Mr. Suresh Kumar for the petitioner.
Mr. A. P. Wachasundar for the respondent.

CORAM : A.K. MENON, J.
DATED : 13TH DECEMBER, 2017

P.C. :

1. By this writ petition, the petitioner seeks to challenge an order dated 27th November, 2012 passed in ATA No.589(9)2010 by the Employees Provident Fund Appellate Tribunal. The appeal called into question an order dated 10th August, 2010 passed under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, whereby damages computed at 37% p.a. in accordance with rates specified under paragraph 32A of the Provident Fund Scheme, 1952 and as referred to in the Notification no.521 dated 16th August, 1991 which came into effect on 1st September, 1991. It was the case of the petitioner before the Tribunal that damages levied were excessive especially considering the fact that the company was facing severe

financial crisis. In view of the specific contentions raised before the Tribunal and as reflected in paragraph 6(b) of the appeal, the respondent reiterated that losses had been incurred and in the circumstances, it was not possible to pay salary or wages as also the provident fund contribution.

2. The Tribunal by the impugned order has proceeded to reduce the percentage of damages to 5%. Paragraph 9 of the order of the Tribunal reads thus:-

> *"9. A perusal of the impugned order indicates that the officer conducting enquiry under section 14B of the Act has not followed the law in its correct perspective. There is no enquiry or finding or fact that the appellant was willfully and deliberately withheld the PF contribution. Therefore, it cannot be held that delay in remittance of PF dues was deliberate. However, keeping in view the reasons and circumstances in which the default in remittance of PF dues occurred, ends of justice be met by restricting the damages upto 5% on the arrears of the contribution. In terms of the above, the appeal is disposed of. Copy of the order be sent to the parties. The file be consigned to the record room."*

3. There is no reasoning whatsoever for reduction in the percentage of damages levied. Merely by stating that the "ends of justice will be met" by restricting the damages upto 5% on the arrears of the contribution,

the Tribunal has sought to dispose of the appeal. No particulars of financial crisis were placed before the Tribunal. Furthermore and as correctly pointed out by Mr. Suresh Kumar, the learned counsel appearing on behalf of the petitioner that the Section 14B quoted in paragraph 5 of the impugned order for levy of damages and paragraph 32A of the Scheme are the unamended provisions whereby the rate of damages was contained at 5% when the period of default was less than two months. Obviously amended provisions have been overlooked by the Appellate Tribunal.

4. On behalf of the respondent, Mr. Wachasundar, the learned counsel opposed the petition contending that there was severe financial crisis leading to the delay in payments. It is submitted that the Assistant Commissioner has proceeded to levy the maximum percentage without any basis and without considering the fact that the respondent company was facing severe financial crunch and it was well within the power of the Tribunal to consider reduction and restrict the percentage of damage. In support of his contentions, Mr. Wachasundar relied upon the judgment of ***Mcleod Russel India Limited v/s. Regional Provident Fund Commissioner, Jalpaiguri and others***[1]. He also relied upon the observations of the Supreme Court in the matter of ***Assistant Provident Fund Commissioner, EPFO***

1 *(2014) 15 Supreme Court Cases 263*

and ors. v/s. The Management of RSL Textiles India Pvt. Ltd.[2] which once again reiterated the view taken by the Mcleod Russel (supra). He also relied upon four decisions of this Court wherein it has been clearly held that there was power to grant reduction.

5. In addition, he submitted that by virtue of EPF Amnesty scheme which was published on or about 30th December, 2016, in all cases where the employers had not enrolled and had not therefore complied with provisions of the Act, were entitled to enroll within the window period provided therein on a mere contribution of Rupee One. He therefore submitted that apart from the fact that there is the power vested in the Tribunal to reduce or restrict their quantum of damages under the Amnesty Scheme the contribution required was only ₹.1/-.

6. After perusing the Notification nos.G.S.R. 1190(E), G.S.R. 1191(E) and S.O. 4250(E) relied upon by Mr. Wachasundar, it is evident that these notifications provided for the period commencing from 1st April, 2009 to 31st December, 2016 and in cases where the employers had not registered from 1st April, 2009. However in the instant case, the period of default commenced on January, 2000 and continued upto February 2008. Clearly the notifications of the EPF Amnesty Scheme are of no

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assistance to the respondents. In any event, the impugned order proceeds based on a provision which was not on the statute book due to which the Tribunal proceeded to restrict the damages at 5% as provided in paragraph 32A of the scheme. Furthermore, there can be no doubt that power to reduce was available but in the instant case there was no justification in reducing the damages to 5%. As far as other submissions are concerned, there is no discussion or finding on that aspect even the Appellate Order does not called the order in appeal on that basis.

7. I have noticed that the impugned order was passed on 27th November, 2012 but the petition is filed in 2015. On the aspect of delay, on a query from the Court, Mr. Suresh Kumar submitted that the delay had occasioned since the petitioner had filed an earlier Writ Petition No.7274 of 2013 which came to be withdrawn on 23rd September, 2014 with liberty to file a fresh petition. In the circumstances, he said that the delay has occasioned only due to the pendency of the earlier petition.

8. I have also perused the order dated 23rd September, 2014 which in terms keeps all contentions of the parties open and liberty to the petitioners to file fresh petitions is granted on the same cause of action

as pleaded in the petitions. In the circumstances, there is no reason for faulting the petitioner on account of delay. In the circumstances, I find that this is a fit case where the matter should be remanded for fresh consideration. I, therefore, pass the following order:-

(i) The impugned order dated 27th November, 2012 is set aside.

(ii) The matter is remanded for de novo hearing to the Tribunal.

(iii) Given the fact that the period of default ended on February 2008 and the fact that long period of time is lapsed, the Tribunal shall dispose of this matter in accordance with law within a period of six months from today.

(iv) All concerned to act on an authenticated copy of this order.

(A.K. MENON,J.)