

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2614 of 2011 (O&M)
Date of Decision:-23.08.2017.

Sangam Packages

.....Petitioner

Versus

Employees Provident Fund Appellate Tribunal and another

.....Respondents

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

Present: Mr. P.K. Mutneja, Advocate for the petitioner.

Mr. Kapil Kakkar, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has assailed the orders dated 21.03.2002, 20.05.2002 and 10.12.2010 (Annexures P-2, P-4 and P-6, respectively).

Petitioner is running an industry in the name and style of M/s Sangam Packages. On 21.11.1997 Inspecting squad of the EPF Department gave a surprise visit in the petitioner's firm and drawn report stating that petitioner has engaged 22 employees, thereby, petitioner is covered by EPF Act. Pursuant to the Inspecting squad's report, competent authority proceeded to hold 7-A proceedings on 13.4.1999 and held that petitioner firm is covered by EPF Act. Aggrieved by the 7-A proceedings dated 13.4.1999, petitioner preferred an appeal before the Appellate Authority.

Appellate Authority allowed the petitioner's appeal on 16.9.1999 and remanded the matter to the competent authority for fresh 7-A proceedings. Fresh 7-A proceedings was conducted on 21.3.2002 and it was against the petitioner. Consequently, petitioner preferred appeal, before the reviewing authority and it was also rejected on 20.05.2002. Thereafter, petitioner preferred an appeal before the Appellate Authority. Appellate Authority affirmed the order passed in 7-A proceedings on 10.12.2010. Thus, the present petition.

Learned counsel for the petitioner submitted that Inspecting squad have tampered the form by putting white fluid at the relevant column where number of employees are required to be mentioned at two places. It was further submitted that petitioner has engaged only 8 employees and in order to prove that only 8 employees were working he has produced number of documents in the 7-A proceedings as well as before the Appellate Authority. The same has not been appreciated and taken into consideration. Authorities proceeded to hold that petitioner had engaged 22 employees as is evident from the Inspecting squad's report. If the petitioner had engaged 22 employees in the firm, the same would have been reflected in various documents which are taken into consideration like general ledger wages for the years 1996-97 and 1997-98, audit report, Form-F Register, Income Tax Return, Register of employees maintained under Shops and Commercial Establishment Act, document relating to ESI Act, 1948 etc. None of the document disclosed that petitioner has engaged 22 employees. Therefore, the respondents have erred in holding that petitioner has engaged 22 employees. Consequently, petitioner is not covered by EPF Act.

Inspecting squad have entered petitioner's firm on 21.11.1997. Prescribed form has been attested by the partners of the petitioner's firm and the form has been filled to the extent that 22 employees were engaged by the petitioner-firm. For the purpose of avoiding EPF coverage, petitioners have shown only 8 employees. It was further submitted that during 7-A proceedings, petitioner had been provided ample opportunity. The same was not utilized to establish petitioner has engaged only 8 employees and not 22 employees. Head counting of physical verification was also taken into consideration, therefore, the petitioner has not made out a case so as to interfere with the impugned orders.

Heard learned counsel for the parties.

On 21.11.1997, Inspecting squad of the respondents gave a surprise visit to the petitioner-firm and report has been drawn. While writing report in respect of 2 columns relating to number of employees which has been shown as 22 employees, just down below the writing of 22 employees on 2 sides whitener fluid has been applied and it has not been attested by Competent Authority so as to what is the reason for applying white fluid. Therefore, there is a doubt in respect of entry of 22 employees engaged by the petitioner. Inspecting squad have not identified names of the 22 employees. Their names should have been mentioned in the report dated 21.11.1997. Therefore, the respondent's contention cannot be accepted to the extent that petitioner had engaged 22 employees. Further no material has been produced except stating that 22 employees have been engaged by the petitioner and it has been attested by the partner of the petitioner-firm. Due to applying fluid at the relevant column in respect of number of employees created a doubt to the extent that some one in the

Department has played mischief. Consequently, benefit of doubt is required to be given to the petitioner to the extent that he has not engaged 22 employees. That apart, petitioner had produced various documents like to show that he has engaged 8 employees only he relied on the following documents:-

- “1. General Ledger (Wages A/c for 96-97)
2. -do- (Wages A/C for 1997-98)
3. Audit report by the CA alongwith Trading, P & L A/C and Balance Sheets, for the year 1996-97 and 1997-98 alongwith its schedules.
4. Form-F Register issued under Shops & Commercial Estt. Act, 1958 dated 19.8.98 indicating the previous registration certificate surrendered.
5. Certificates of computation of income, Saral for AY 1998-99, Form-2 for A.Y. 1997-98.
6. Register of Employees maintained under Shops & Commercial Estts. Act showing monthwise employment position for the period relevant.
7. Code No. letter bearing No.PB/17/39334/66 dated 31.5.1994 issued by the Asstt. Regional Director, Employees, State Insurance Corpn. Chandigarh bringing the estt. under the purview of the ESI Act, 48 w.e.f. 16.5.1994 (Prov.).”

In the Inspecting squad's report, tampering is on two places. One can understand if there is any mistake or error whitener fluid can be applied at a place. To that effect attestation is also required. No one has attested while applying white fluid by the Competent Authority. In fact material was sent to FSL and from report it is not evident as to what was written under whitener fluid mark. Therefore, Competent Authority failed to prove that petitioner has engaged 22 employees so as to hold petitioner is

20.05.2002 and 10.12.2010 vide Annexures P-2, P-4 and P-6 are set aside.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

August 23, 2017.

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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.