

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

CWP No.9048 of 2011

Date of Decision:03.11.2017

Regional Provident Fund Commissioner

... Petitioner

Vs.

M/s Nijjar Agro Foods Limited and another

... Respondents

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

Present : Mr. Rajesh Hooda, Advocate for the petitioner.

Mr. Rahul Verma, Advocate for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the validity of the order dated 18.3.2011 (Annexure P-3) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (for short "EPFAT").

Respondent No.1-company could not remit Employees Provident Fund timely during the period from September 1998 to March 2006. Consequently, petitioner issued a notice as to why damages and interest on belated settlement of EPF amount be not levied. Thereafter, on 29.03.2007, competent authority proceeded to pass orders under Section 14-B and 7-Q of the Employees Provident Fund & Misc. Provisions Act, 1952 (for short "the Act") while determining to levy damages to the extent of Rs.22,03,649/- and further determining interest to the extent of Rs.2,77,777/- (Annexure P-1). Respondent No.1-Company feeling aggrieved by the orders passed under Section 14-B and 7-Q of the Act preferred an appeal before the EPFAT. EPFAT decided appeal filed by respondent No.1 on 18.3.2011 by reducing the levy of damages and interest to the extent of 22% from 37% inclusive of interest. Thus, the present

petition challenging the order dated 18.3.2011 passed by the EPFAT.

Learned counsel for the petitioner submitted that EPFAT has no jurisdiction to modify the levy of damages under Section 14-B of the Act. It was also submitted that there is no appeal provision against interest levied under Section 7-Q of the Act. Thus, EPFAT has erred in modifying the damages and interest. It was further contended that EPFAT has taken note of the fact that there was financial crunch so also respondent No.1-company was referred to BIFR, therefore, proceeded to modify order passed under Section 14-B and 7-Q of the Act dated 23.03.2007. Learned counsel for the petitioner relied on the following decisions in support of the contention that EPFAT cannot consider financial crunch in respect of deciding the appeal against order passed under Section 14-B of the Act (i) RPFC v. Bharat Plywood; 1980 LIC 446 (see: para-6 of the judgment); (ii) Hindustan Times v. Union of India and others 1998(2) SCC 242 (see: paras 28 and 29 of the judgment); (iii) Dalgaon Agro Ind. Ltd. v. Union of India and others (see: paras 43, 48, 47, 53 and 58 of the judgment); (iv) Vikram Poddar v. RPFC and others; 2001 (II) LLJ 518 (see: paras 5 and 6 of the judgment); (v) CWP No.16067 of 2011; Patiala Co-operative v. EPFAT and (vi) The Chairman, SEBI v. Shri Ram Mutual Fund; 2006 (5) SCC 361 (see: paras 11 and 16 of the judgment. These decisions are cited on the contentions that damages are compulsory in nature and it is mandatory. Even otherwise as per the statutory provision, competent authority is required to modify damages and interest. In view of these facts and circumstances, order dated 18.3.2011 passed by the EPFAT is liable to be set aside.

Per contra, learned counsel for respondent No.1 submitted that there is no infirmity in the order passed by the EPFAT dated 18.03.2011

since EPFAT has considered the financial crunch of the respondent-company. That apart respondent-company was referred to the Board for Industrial and Financial Reconstruction (for short "BIFR"). In fact EPFAT have taken note of while modifying the order dated 23.3.2007 to the extent that damages could be modified from 37% to 22% inclusive of interest. Thus, the petitioner has not made out a case so as to interfere with the order dated 18.3.2011 passed by the EPFAT.

Heard learned counsel for the parties.

Undisputed facts are that respondent No.1-company remitted EPF amount for the period from September 1998 to March 2006 belatedly. Consequently, Section 14-B and 7-Q of the Act are attracted for the purpose of levying damages and interest for the belated settlement of EPF amount by the respondent-company. Before determining the damages and interest under Section 14-B and 7-Q of the Act, petitioner issued a show cause notice to the respondent-company. Thereafter, on 29.03.2007 damages as well as interest have been determined to the extent of Rs.22,03,649/- and further determining interest to the extent of Rs.2,77,777/-. All along the contention of the learned counsel for the respondent-company is that respondent-company was under financial crunch and company was referred for BIFR. Therefore, EPFAT has appreciated the financial status of the company and proceeded to modify the damages and interest determined under Section 14-B and 7-Q of the Act. Insofar as contention of the petitioner is concerned, it is to be noted that provisions of the Act has been examined thoroughly by various Courts in particularly the decisions cited supra (i) RPFC v. Bharat Plywood; 1980 LIC 446 (see: para-6 of the judgment); (ii) Dalgaon Agro Ind. Ltd. v. Union of India and others (see:

paras 43, 48, 47, 53 and 58 of the judgment) and (iii) The Chairman, SEBI v. Shri Ram Mutual Fund; 2006 (5) SCC 361 (see: paras 11 and 16 of the judgment). In all these cases, Courts have held that levying damages are compulsory in nature. Therefore, question of taking any sympathetic view merely because company is under financial crunch and the company has been referred for BIFR. In the case of Shri Ram Mutual fund (supra) no doubt it is not relating to EPF Act but at the same time while interpreting provisions of SEBI Act, wherein also levy of damages provisions is identical to that of EPF Act. In respect of financial crunch contention is concerned, matter has been decided in the case of Hindustan Times (supra) and Patiala Co-operative (supra), in view of the principle laid down by the Supreme Court as well as various Courts to the extent that levy of damages is under statutory provision which are mandatory in nature, therefore, question of waiver or reducing damages are not available. In other words, levying of damages and interest are mandatory and the same has been considered in the aforesaid decisions.

In view of the above facts and circumstances, order dated 18.3.2011 (Annexure P-3) passed by the EPFAT is set aside. Consequently, order dated 29.3.2007 (Annexure P-1) is upheld.

Accordingly, writ petition stands allowed.

03.11.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No