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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5141/2016 & CM No.21832/2016

Date of Decision: 22.08.2017

M/S CHAMUNDA STANDARD MILLS Petitioner

Through: Mr.S.K.Gupta, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr.R.R.Rajesh, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. Though placed on record is the counter affidavit on behalf of the respondent as observed in proceedings dated 16.8.2017, no notice of the petition has ever been issued at any stage.
2. Submissions have now been made on behalf of either side.
3. Vide the present petition, the petitioner assails the impugned order dated 5.6.2015 of the Employees' Provident Fund Appellate Tribunal in ATA No.524(8)2015 whereby the appeal and the application for condonation of delay, and an application under Section 7-O of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') were taken up for consideration and arguments on the application under Section 7-O of the 'Act' related to the orders dated 23.7.2014 and 22.1.2015

of the Assistant Provident Fund Commissioner, Indore, in terms of Section 7A of the 'Act'. The said order dated 23.7.2014 of the Regional Provident Fund Commissioner-II, Indore, Madhya Pradesh, under Section 7A of the said enactment after an opportunity of hearing both, the petitioner herein as petitioner thereof and also the Employees' Provident Fund Officer, Regional Office, Indore, and after consideration of the records and the information produced before it and the submissions made, accepted the findings of the Enforcement Officer and a report dated 17.6.2014 which brought forth that there were dues for the period from March, 2009 to July, 2013 in relation to the non-deposit of Provident Fund Contribution by the petitioner herein as petitioner thereof and the said order dated 23.7.2014 of the Employees' Provident Fund Officer, Regional Office, Indore also brought forth that though initially the Enforcement Officer had put forth the period under which the action was proposed under Section 7A of the 'Act' to be from March, 2009, after assessment of the documents from the factory of the petitioner, after user of police assistance, done on 14.2.2014 which was done with the concurrence of the management and police assistance and with the assistance of the Enforcement Officer, who advised to minutely examine and workout the dues from the relevant seized records for the period for which action was contemplated under Section 7A of the 'Act', from March, 2009 to July, 2013 which brought forth that a sum of Rs.1,95,70,028/- was due to be paid by the petitioner herein and thus the employer, i.e., the petitioner was directed to deposit an amount of Rs.1,95,70,028/- within 15 days on the receipt of the said order failing which the

recovery would be initiated according to the provisions of Section 8B to 8G of the 'Act'. It was also observed that this order was without prejudice to the action under 7B and 7C and Section 114B of the 'Act'.

4. Through, the appeal that has been submitted as ATA 524(8) 2015 before the Employees' Provident Fund Appellate Tribunal, New Delhi, it had been contended that the said order dated 23.7.2014 suffers from non-application of mind and was bad in law and against the evidence and the appellant, i.e., the present petitioner sought exemption from pre-deposit for the statutory amount at the time of filing the appeal which was refuted on behalf of the respondent Assistant Provident Fund Commissioner, Indore in view of Section 7-O of the 'Act' submitting to the effect that the said amount had to be deposited, as without deposit of the same, the appeal would not be entertained.

5. Reference was made to Section 7-O of the 'Act' which reads to the effect:

*“7-O Deposit of amount due, on filling appeal:
No appeal by the employer shall be entertained by a tribunal unless he has deposited with it seventy-five percent of the amount due from him as determined by an officer referred to in section 7A.*

Provided that the tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

6. The Employees' Provident Fund Appellate Tribunal vide the impugned order observed to the effect that it was mandatory for the appellant to deposit 75% of the assessed amount at the time of filing of the appeal and that the Tribunal for the reasons recorded in the application reduced the amount to be deposited under Section 7-O of the said enactment and it was further observed to the effect that there were no justified grounds for grant of exemption from the entire pre-deposit of 75% of the amount assessed but in view of the financial condition of the appellant and other circumstances, the manner of assessment by the Commissioner and other arguable points, the Employees' Provident Fund Appellate Tribunal reached the firm opinion that the pre-deposit amount could be reduced upto 50% of the assessed amount, it having been observed vide the impugned order that the said finding of the Tribunal was at an interim stage and would not affect the finding of the Tribunal at the time of final disposal of the case.

7. It was further directed that subject to the deposit of the 50% of the assessed amount, the impugned order of the Employees' Provident Fund Officer, Regional Office, Indore, would stand stayed during the pendency of the appeal and the respondent therein, i.e., EPFC had also been directed to file the counter reply to the appeal and to the application for condonation of delay filed by the appellant therein, i.e., the present petitioner and the proceedings of the matter had been directed to be listed before the EPFAT on 16.9.2015.

8. The appellant therein, i.e., the present petitioner, however, chose not to make the deposit of the reduced pre-deposit amount in

terms of the impugned order dated 5.6.2015 of the EPFAT (New Delhi) and as a consequence thereof, the appeal 524(8)2015 of the appellant therein, i.e., the present petitioner was dismissed, with it having been expressly observed by the EPFAT to the effect that the appeal was not supported by any authorization letter of any liquidator for filing the appeal before the Tribunal.

9. The Employees' Provident Fund Appellate Tribunal, thus observed vide order dated 16.9.2015 to the effect that there was no ground to modify the order dated 5.6.2015.

10. Through the reply, that has been filed on behalf of the respondent it has been submitted that the said enactment is a social welfare legislation and that any effort by the employer to deny its employees the legitimate dues which they have rightly earned in terms of the provisions of the 'Act' needs to be looked upon with suspicion and that the employer had a tendency to file such a case with a view to defeat the object of the social security legislation. Reliance was also placed through the reply submitted on behalf of the respondent on the verdict of the Supreme Court in ***RPFC v. Shibu Metal workers***, 1964-65 (27) FJR 491 to submit that in construing the material provisions of the 'Act' if two views are reasonably possible, the court should prefer the view which helps the achievement and furtherance of the object.

11. Likewise, reliance was also placed on behalf of the respondent on the verdict of the Supreme Court in ***Regional Provident Fund Commissioner v. Hooghly Mills Company Limited & Others: (2012) 2 SCC 489***, to similar effect to submit that the statute ought to be read as a whole considering its design, purpose and remedy for an

enactment of its object and intention.

12. Reliance was also placed on behalf of the respondent on the verdict of this High Court in ***Jagat Talkies Distributors & Company v. Union of India***: 1997 (2) LLJ 133 to contend that the petitioner therein had not complied with the direction to deposit the dues as tentatively determined by the Court in a writ petition against the order of the Authority and thus it was held that the petitioner had no right to be heard and all pleas raised by the petitioner had been rejected.

13. Through the reply that has been submitted on behalf of the respondent it was *inter alia* submitted that the establishment had itself admitted that the provident fund contribution so deducted from the salaries and wages of its employees for the period w.e.f April 13 to July-13 was not deposited by them within the stipulated period provided under the 'Act' and the scheme and that further more, the remittance that had been made on an amount at a later stage, had been taken into account whilst passing the final order under Section 7A of the 'Act'.

14. During the course of arguments on behalf of the petitioner reliance was placed on the verdict of the High Court of Karnataka, ***M.I. Metal Sections Pvt. Ltd. v. Collector of Central Excise***, Bangalore 1995 (75) E.L.T.225 (M.P.) to submit that there could not be a dismissal of an appeal by the Customs, Excise and Gold Control Appellate Tribunal where the appellant had failed to make the pre-deposit of the amount imposed by the Commissioner and if there was any plea raised in relation to financial difficulties/circumstances beyond control by an appellant the Commissioner has to consider the

said appeal on its merits even when there was no compliance of condition of a reduced pre-deposit amount.

15. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in ***Mehsana District Co-operative Milk P. U. Ltd. v. Union of India***; 2003 (154) ELT 347 (SC) under Section 35 of the Central Excise Act, 1944 where the appellants therein had been directed to deposit an amount of Rs.30,000,00/- by way of a pre-deposit and the reasoning given in support of the stay order having been held to be unsatisfactory, the matter had been remanded back to the appropriate authority for re-determining the issue under Section 35F of the 'Act' after affording an opportunity of hearing to the parties.

16. Reliance on behalf of the petitioner, was also placed on the verdict of the Delhi High Court dated 13.3.1995 in ***Swaraj Mazda Ltd. v. Union of India*** in W.P.(C) No. 1494/1994, in relation to a company which was a sick company under the SICK Industrial Companies (Special Provisions) Act, 1985 observing to the effect that the appellate authority under the said enactment has to see the extent of undue hardship of a company and also to take into account that it had to safeguard the interest of the revenue.

17. On behalf of the respondent, it has been submitted qua the rulings case relied upon on behalf of the petitioner that they do not fall within the domain of the present *lis* in as much as they do not relate to contributions to the employees' provident fund thereof and that the enactment under which the present *lis* has been filed is the Employees Provident Fund (Miscellaneous Provisions), a social welfare

legislation which has to be implemented in letter and spirit.

18. At the outset, it is essential to observe that the contention that has been raised on behalf of the petitioner during the course of the hearing in the present writ to the effect that no opportunity of being heard was granted to the petitioner, due to non-compliance of the direction of pre-deposit as imposed vide order dated 5.6.2015 as from the impugned order thereof of the Employees' Provident Fund Appellate Tribunal, cannot be accepted taking into account the factum that the Employees' Provident Fund Appellate Tribunal has categorically observed to the effect :

“In case in hand grounds taken for seeking exemption under sections 7-O of the Act are not justified grounds for grant of exemption from entire Pre Deposit of seventy five percent amount of the assessed amount. But keeping in view the present financial position of appellant, other stated circumstances, manner of assessment by commissioner, and other arguable points, this Tribunal reached at a firm opinion that pre deposit amount should be reduce up to fifty percent of assessed amount. (This finding of the tribunal is at interim stage hence shall not effect the finding of the tribunal at the time of final disposal of the case.

Although present appeal is to be dismissed on account of non Pre-Deposit of amount as provided in the Act, but at this juncture this Tribunal is of the opinion that some time be given to appellant so that amount prescribed under section 7-O, as stated above,

may be deposited by appellant, so accordingly, appellant is directed to deposit the above said amount with the concern authority within 30 days of this order and intimate the same with the Registry along with the affidavit. It is made clear that in case above stated amount not deposited by appellant in stipulated period then appeal shall be deemed to be dismissed and file shall be consigned to record room by the Registry.”

19. The said aspect itself indicates very clearly that an opportunity of being heard was granted to the appellant therein, i.e., the present petitioner to bring forth its financial difficulties which were also not chosen to be brought forth by the petitioner before the Employees’ Provident Fund Appellant Tribunal effectively, and vide order dated 16.9.2015 of the EPFAT, it was observed to the effect:

“ Admittedly present appeal is not supported by any authorization letter of any liquidator for filing of appeal before this Tribunal. Considering all the facts of the case, this Tribunal nowhere found any ground to modify order dated 5.6.2015 so application for modification filed by appellant is dismissed. As appellant has not complied with order dated 5.6.2015 so by allowing application for rejection of appeal filed on behalf of respondent present appeal is hereby dismissed. Copy of the order be sent to the parties as per law”.

20. In reply to a specific court query, the learned counsel for the

petitioner has adverted to the order dated 15.9.2014 of the High Court of Bombay in Company Petition No.177/2014 to contend that the petitioner was in great financial difficulty, the perusal of which indicates that the Official Liquidator therein had been directed to proceed with the matter without waiting for any notification.

21. It is essential to observe that even in the proceedings in the Company Petition No.177 of 2014 vide order dated 15.9.2014 of the High Court at Bombay there is a reference made to proceedings where the counsel for M/s S.Kumars Nationwide Limited, the respondent therein, had submitted that the company was facing “a temporary financial crunch and, therefore, some time could be given to the company to pay the dues of the petitioners therein,(i.e., India Debt Management Private Limited.)” The learned counsel for the petitioner has contended that the petitioner therein, i.e., M/s S.Kumar Nationwide Limited, owned, the petitioner herein, which aspect is stated in para 1 of the petition. This aspect itself is an indicator that the observations dated 16.9.2015 in ATA No.524(8)/15 to the effect that there was no adequate documentary evidence produced before the EPFAT to bring forth financial constraints, cannot be faulted with.

22. Reliance was, *inter alia*, placed on behalf of the petitioner on the verdict of this Court in ***M/s Jaibharat Textile and Real Estate Ltd. v. Regional Provident Fund Commissioner-II***; dated 17.12.2015 in W.P.(C) No.10096/2015 to submit that in circumstances where the company faced financial constraints, there was direction to the EPFAT to hear the appeal again after deposit of an amount of Rs.25 lakhs as was sought to be submitted in that case by the company M/s JaiBharat

Textile & Real Estate Ltd. and an opportunity for hearing of the appeal had been granted. Needless to observe vide this verdict relied upon itself it is made apparently clear that the petitioner therein had made an effort to deposit the amount of Rs.25 lakhs in part compliance of Section 7A and 7(O) of the order of the Assistant Provident Fund Commissioner. No such attempt to comply even partly with the law was made by the petitioner herein.

23. It is essential to observe that the Supreme Court in *Organo Chemical Industries v. Union of India* (1979) 4 SCC 573 has laid down to the effect that the delay in **deposit of the contribution made towards the employees provident fund amounts to breach of trust and does not entitle the employer to the consideration of relief.**

24. On a consideration of the rival submissions and the impugned orders it is held that there is no infirmity whatsoever in the order dated 5.6.2015 and of the EPFAT, New Delhi and consequential order dated 16.9.2015 in ATA 524(8)15 in view of the non-adherence of the petitioner of compliance of direction dated 23.7.2014 of the Regional Provident Fund Officer, Indore and 22.1.2015 of the EPFO, Indore.

25. The writ petition and CM No.21832/2016 are, thus, dismissed.

ANU MALHOTRA, J

AUGUST 22, 2017/sv