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

% *Date of Judgment: 8th November, 2017*

\+ **W.P.(C) 6328/2011**

U P CERAMICS & POTTERIES LTD. ..... Petitioner
Through Ms.Usha Nandini, Advocate

versus

THE REGISTRAR, EMPLOYEES' PROVIDENT FUND TRIBUNAL & ANR. ..... Respondents
Through Ms.Inderjeet Sidhu and Ms.Suchitra Chawla, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>CHANDER SHEKHAR, J. *(ORAL)*</u>

1. This is a writ petition under Articles 226 and 227 of the Constitution of India for issuance of an appropriate writ, order or direction, for setting aside the impugned order dated 04.07.2011 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No.141(14) of 2010 filed against the order dated 15.02.2010 passed by the Regional Provident Fund Commissioner-II, Meerut, for an amount of Rs.11,45,640/-, under Sections 14B & 7Q of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "EPF&MP Act"). A prayer is also made for staying of the operation of the impugned order.

2. Learned counsel for the petitioner submitted that the petitioner is an Establishment covered under the EPF & MP Act with a Code No.UP-1304 and it is complying with all the provisions of the said Act.

3. Counsel further submitted that she has filed the written synopsis on the record and raised the following questions for consideration:-

(i) Section 14B order is not a reasoned order and no calculation is there, on what basis the amount has been arrived.

(ii) The assessment has been made after 13 years.

(iii) The element of *actus reus/mens rea* is nowhere mentioned in the 14B order. There is no logical conclusion as to the element of *actus reus/mens rea* prevailing at the time of initiating the proceedings.

(iv) "No arrear" was there at the time of initiation of proceedings by the respondent authority.

(v) The Tribunal has failed to consider the issues in the appeal and had arrived at a conclusion that the calculation made by the authority is correct, even though no such calculation was made out in the 14B order.

(vi) No interest is chargeable, as the charging of interest is in-built in the slab rates of damages, that too if damages would be charged considering the element of *actus reus/mens rea*.

4. Learned counsel for the petitioner also submitted that the case of the petitioner is that there was no error committed by the petitioner. It is further stated that the Appellate Tribunal had decided the appeal of the petitioner without applying its mind on the facts which are contrary to the record. Counsel specifically referred para 2 of the impugned order dated 04.07.2011 wherein it is stated as under:-

> *"2. The case of the appellant is that the appellant is an establishment covered under the Act and it was making the contribution towards the provident fund regularly. Due to labor unrest, the establishment faced financial problem due to which the appellant failed to pay the contribution in time. The EPF Authority initiated a proceeding under Section 14B of the Act*

and without considering the case of the appellant levied the damage and interest. The impugned order is illegal."

5. Learned counsel for the petitioner also submitted that the Regional Provident Fund Commissioner (RPFC) and the Employees' Provident Fund Appellate Tribunal has failed to take into consideration the grounds as mentioned in the petition filed before the RPFC as well as the grounds raised by the petitioner in the appeal filed before the Appellate Tribunal. Counsel also submitted that the impugned order has been passed in haste without giving any reasons for the calculation arrived at by the RPFC/ respondent No.2 in the order dated 15.02.2010 which is upheld by the impugned order dated 04.07.2011.

6. Learned counsel for the petitioner further submitted that the Appellate Tribunal has failed to take into consideration the grounds of the appeal in the judgment as relied upon by the petitioner while disposing of the appeal. She also submitted that the Appellate Tribunal treaded a different path and passed the impugned order on different premise as it is evident from the para 2 of the impugned order dated 04.07.2011. The very basis of the order is itself contrary to the submissions and the grounds of the appeal filed by the petitioner.

7. *Per contra*, the learned counsel for the respondents vehemently opposed the petition and the submissions made by the learned counsel for the petitioner.

8. Learned counsel for the respondents submitted that so far as ground of limitation is concerned, it is a settled law in view of the judgment ***M/s Hindustan times Ltd. v. Union of India and others,*** **1998 LAB. I.C. 483 (SC).** The relevant portion of the judgment reads as under:-

"18. Now the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The monies payable into the Fund are for the ultimate benefit of the

employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested in the Regional Provident Commissioner or other officer as provided in section 14-B. Recovery is not by way of suit. Initially, it was provided that the arrears could be recovered in the same manner as arrears of land revenue. But by Act 37/53 section 14-B was amended providing for a special procedure under section 8-B to 8-G. By Act 40/73 section 11 was amended by making the amount a first charge on the assets of the establishment if the arrears of employee's contribution were for a period of more than 6 months. By Act 33/88, the charge was extended to the employee's share of contribution as well."

9. Learned counsel for the respondents, when confronted with para 2 of the impugned order, wherein it is noted by the Appellate Tribunal that it was the case of the petitioner that due to labour unrest, the Establishment faced financial problem because of which the appellant failed to pay the contribution in time as well as other contrary factual position mentioned in the impugned order, the learned counsel for the respondents fairly conceded the factual error in the order and submitted that the matter may be remanded back.

10. On the query raised by this Court, it is submitted by the learned counsel for the respondents that so far as the question under Section 7Q of the Act is concerned, that is covered by the judgment delivered in the case of ***Roma Henny Security Services Pvt. Ltd. v. Central Board of Trustees, EPFO*, 2012 (132) DRJ 753 (FB).** Counsel fairly submitted that so far as the interest levied under Section 7Q of the EPF & MP Act is concerned, the same is also required to be reconsidered in view of the above said judgment. Counsel submitted that the matter may be remanded back to the Appellate Tribunal for reconsideration.

11. In view of the aforesaid facts and after observing the factual error in the order of the Appellate Tribunal which is apparent on the face of the

record and further taking into consideration the submissions of both the parties, the impugned order dated 04.07.2011 is set-aside, with the direction to the Appellate Tribunal to reconsider the appeal and re-calculate the damages, if any, as per law.

12. Parties are directed to appear before the concerned Tribunal on 07.12.2017 at 10:00 a.m. The concerned Tribunal is directed to dispose of the appeal after giving opportunity of hearing to both the parties, preferably within eight weeks w.e.f. 07.12.2017.

13. The present petition is disposed of accordingly.

CHANDER SHEKHAR, J

NOVEMBER 08, 2017/b