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

\+ LPA 246/2017 & CM No. 13295/2017 (stay)

M/S NEW PUNJAB MOTORS & TRACTORS WORKS THE R K SACHDEVA ..... Appellant

Through Mr.Rajiv Arora and Mr.S.P.Arora, Advocates

versus

ASSISTANT PF COMMISSIONER, DELHI (NORTH) ..... Respondent

Through Mr. Keshav Mohan & Mr.Piyush Choudhary, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

O R D E R

% 26.04.2017

This intra court appeal impugns the order dated 15.3.2017 passed by the learned Single Judge whereby the appellant/petitioner has been asked to deposit 50% of the demanded amount with the Registrar General of the Court within a period of three weeks.

2. The contention of the appellant/petitioner is that they have already made payment under Section 7Q of the Employees Provident Fund Act, 1952. The direction/order amounts to double payment. The second contention is that the appellant/petitioner had wrongly made payments under Section 7Q and that said payments should be adjusted and accounted.

3. With reference to the first contention, the petitioner/appellant has drawn our attention to show cause notice dated 20th October, 2011 which pertains to the period between September, 1997 till February, 2010. The total amount demanded under Sections 7Q and 14B for the said period was Rs. 23,80,705/-. The petitioner/appellant states that he has paid the said amount.

4. The second show cause notice dated 20th March, 2014 was for the period between March, 2006 to February, 2013. Damages and interest demanded under Sections 14B and 7Q were Rs. 8,11,000/- and Rs. 3,16,702/- respectively. This demand of Rs.11,27,702/- was paid on 26.4.2014 and 28.4.2014.

5. The respondents thereafter, issued the third show cause notice dated 8th March, 2016, which was for the period between July, 2009 to 10th November, 2015 for interest of Rs.11,21,426/- under Section 7Q and Rs.23,24,586/- as damages under Section 14B.

6. The petitioner/appellant vide reply dated 22.03.2016 had submitted that the computation made by the respondents was incorrect and had failed to account for payments made between July, 2009 to February, 2013 i.e. the period referred to in the second show cause notice. Thereafter, revised computation was furnished vide Annexure A-13, which is undated. As per this computation, the demand under Section 7Q was Rs.10,75,932/- and Rs. 22,37,735/- was payable under Section 14B. In other words, a total amount of Rs.33,13,667/- was payable. A computation chart bifurcating and justifying the demand payable was enclosed with the revised computation.

8. Thereafter, order dated 12.8.2016 was passed under Section 7Q of the Act imposing interest of Rs.10,75,932/- for the period between July,2009 to November, 2015. Thus, the contention of the petitioner/ appellant is that, there is overlapping and double demand for interest for the period between July, 2009 till February, 2013 under Section 7Q of the Act.

9. Learned counsel for the respondents states that the respondents are entitled to pass a second order for the same period, if there is any miscalculation or error in an earlier order which needs to be corrected. Thus, the impugned order dated 12.8.2016 is justified and correct.

10. Keeping in view the dispute raised which has to be decided by the learned Single Judge, we deem it appropriate to direct the appellant/petitioner to deposit 50% of the demand for the period between March, 2013 to November, 2015 under Section 7Q of the Act and 25% of the demand for period between July, 2009 to February, 2013. We clarify that we have not pronounced or expressed any opinion on merits or decided whether or not the respondents are entitled to pass the second order relating to the period for which an order has already been passed. This is an aspect which has to be adjudicated and decided by the learned Single Judge.

11. The second contention of the appellant/petitioner, according to respondents, has no merit and has to be rejected. They submit that even if it is assumed that the appellant/petitioner had wrongly made payments under Section 7Q for earlier periods, they cannot seek adjustment without any adjudication or decision for refund. As long as the order(s) stand and are not set aside, the payments made cannot be

refunded or adjusted. We would not by an interim order, direct or take into account the alleged excess payment at this stage. This contention of the petitioner/appellant is to be examined and dealt with on merits by the Single Judge.

12. The respondents would furnish a revised computation of interest under Section 7Q for the two periods within a period of 15 days from the date of receipt of this order and accordingly the appellant/petitioner would deposit the said amount within six weeks thereafter.

We once again clarify that the observations made in this order are tentative and would not be treated as final and binding. The appeal is disposed of. No costs.

Dasti.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

APRIL 26, 2017
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