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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 892 OF 2018

The Central Board of Trustees ... Petitioner

vs.

M/s. Bombay Rayon Fashions Ltd. ... Respondent

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Mr. Suresh Kumar a/w.Ms. Priyanka Tiwari for the Petitioner.

Mr. Meelan Topkar for the Respondent.

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CORAM : A.K. MENON, J.

DATE : 28th MARCH, 2018

P. C.

1. The challenge in this petition is by the Central Board of Trustees acting through Assistant Provident Fund Commissioner (Legal) who assails order dated 9th January, 2017 passed by the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 973(9) 2015 whereby the Tribunal reduced the damages levied under Section 14B in the case of the respondent.

2. The appellant sought relief from the Tribunal against orders passed under Section 14B and Section 7Q of the Act whereby damages of Rs.71,90,356/- and interest of Rs.37,16,364/-were levied. The impugned order records that the order in appeal dated 30th June, 2015 related to a period of 8 years commencing from

March 2007 to May, 2014 and the appellant contended that the impugned order determines an amount payable which is far higher than what is due.

3. The impugned order after considering the submissions proceeds to determine liability to pay damages at 60%. No reasons whatsoever are given for reduction in the amount of damages, while retaining the liability to pay interest at the entire assessed amount. The computation of damages under Section 14B would also have undergone change pursuant to Circular no. GSR 689 (E) dated 26th September, 2008 which came into effect from the same date resulting in a reduction in the rate of damages computed on the basis of percentage of arrears. The impugned order has also proceeded on the basis that the amount of damages computed under Section 14B and as amended, included amount of interest under Section 7Q @ 12% per annum or at such other higher rate as may be specified in the scheme and leviable on "any amount" due from the employer.

4. For ease of reference Section 7Q is reproduced below.

7-Q : Interest payable by the employer – The employer shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

5. As rightly contended by Mr. Suresh Kumar, in this manner if one computes the element of interest thus chargeable separately it cannot be in my view be said to be a part of the damages assessed. In the circumstances reduction to 60% on the basis that the amount of damages on 14B appears to be erroneous and the impugned order is therefore liable to be set aside and the matter be remanded for fresh computation. It is stated across the bar that the said Appellate Tribunal is not now in Delhi but the CGIT-I and II, Mumbai are hearing appeals under the Act. It is further stated that CGIT-I is presently vacant and in view of the same order of remand will be required to be addressed to the CGIT-II who will decide the application afresh.

6. In the circumstances, I pass the following order :

(i) Impugned order dated 9th January, 2015 is hereby set aside and the appeal no. ATA No. 973(9) 2015. is remanded to the CGIT_II for computation of March 2007 to May, 2014 for fresh consideration. All contentions are kept open.

(ii) Writ Petition is disposed of in the above terms.

(A.K. MENON, J.)