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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2247-2013
Date of Decision : July 25, 2018

Employees Provident Fund Organisation

.... Petitioner.

Versus

M/s Pargati Silicones Ltd. and another

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Rajesh Hooda, Advocate
for the petitioner.

Mr. Jagdish Manchanda, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing order dated 24.01.2011 passed by Employees' Provident Fund Appellate Tribunal (for short, "**the Appellate Tribunal**") whereby the matter has been remanded to the Employees Provident Fund Authority (for short, "the Authority") to assess the liability at the rate of 22% including the interest from @ 37% without any basis.

2. Respondent No.1 company was liable to make payment of contribution towards employees provident fund under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "**the**

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Act") timely and the said payments were not made for the period from August, 1992 to January, 2000. A show cause notice, dated 18.12.2002 was issued by the petitioner to the employer as to why damages under Section 14-B of the Act be not recovered from it. After giving opportunity of hearing to the employer on 15.1.2003 and 29.01.2003, order dated 10.3.2003 (Annexure P/1) was passed and damages were imposed and the total liability on account of provident fund contribution, damages and interest was fastened to be Rs.3,87,784/-. The employer-respondent No.1 challenged the said order, Annexure P/1 and the Appellate Tribunal vide order dated 24.01.2011 (Annexure P/3) remanded the matter back to the Assessing Authority to assess the liability at the rate of 22% inclusive of interest.

3. The petitioner is aggrieved of passing of the said order, Annexure P/3.

4. Learned counsel while arguing on this point of legality of the impugned order, Annexure P/3, contended that it was an admitted case of delayed deposits by the employer and violation of provisions of the Act. Taking into consideration the long delays, the Assessing Authority under the Act passed order Annexure P/1 fastening the total liability of Rs.3,87,784/-. There are no grounds to set-aside the said order on account of financial constraints on the part of the management and the Appellate Tribunal has passed the order under challenge without there being any justified ground. In support of his contention, learned counsel for the petitioner has placed reliance on the decision of Hon`ble Supreme

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Court in **M/s Hindustan Times Ltd. Vs. Union of India and others**, AIR 1998 SC 688 and decisions of Hon`ble Co-ordinate Benches this Court in **Regional Provident Fund Commissioner Vs. M/s Nijjar Agro Foods Limited and another**, CWP No. 9048 of 2011, decided on 03.11.2017; **Patiala Co-operative Sugar Mills Ltd. Vs. The Employees Provident Fund Appellate Tribunal and others**, CWP No. 16067 of 2011, decided on 22.11.2016; **The Regional Provident Fund Commissioner Vs. M/s Shivon International and another**, CWP No. 22297 of 2012, decided on 30.07.2015.

5. While arguing on this point, learned counsel representing respondent No.1 contended that the payment of Rs.1,50,000/- has already been made and it was not a case of non-deposit of provident fund amount, rather at the most, it was a case of delayed payment and the matter has been considered in its entirety by the Appellate Tribunal especially taking into consideration the fact that the Management was suffering from financial constraints and suffered total loss of Rs.9,58,258.25, as reflected in the balance sheet of the company. On that basis, the Appellate Tribunal reduced the liability from 37% to 22% and remanded the matter back for determination of the liability. There are no grounds to interfere in the said order.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the basic facts are not disputed that respondent No.1-Company is liable to deposit the amount of provident fund timely with the authorities

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under the Act and there was long delay on account of deposit of the amount. As such, notice was issued to the employer on 18.12.2002 to show cause within 15 days as to why damages as envisaged under Section 14B of the Act be not levied from it and thereafter due opportunity of hearing was given to employer. The only ground taken before the Appellate Tribunal was that respondent no.1 was suffering from financial constraint and as such, there was some delay in deposit of the amount. This Court has considered the matter in its entirety and is of the view that the Appellate Tribunal has considered those facts, which were not material for reversing or modifying the order, Annexure P/1 passed by the Assessing Authority under the Act.

7. In **M/s Hindustan Times Ltd.'s case (supra)**, Hon`ble Apex Court discussed the ambit and scope of Section 14B of the Act as well as the nature of liability of the employer in case of timely deposit of amount with the Provident Fund authorities and observed as under:-

“28. From the aforesaid decisions, the following principles can be summarised: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts cannot be justifiable grounds for the

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employer to escape liability;...”

8. In **Organo Chemical Industries & Another vs. Union of India & Others** 1980 (1) SCR 61, upheld the vires of the Act and held as under:-

“ this Court laid down that while passing orders under section 14-B, the authority was acting in a 'quasi-judicial' capacity and was bound to give reasons for its orders. The levy was not necessarily proportionate to the loss incurred by the employee inasmuch as it was partly compensatory and partly penal.”

9. Hon`ble Apex Court also observed in **Organo Chemical Industries's case (supra)** that if the deposit was delayed due to difficulties which were beyond the control of the Management or there were disputes between the partners of the firm or there was power-cut of 60% or there was huge amounts of loan payable to the financial institution, such explanations of the Management are not acceptable. The default could not be linked with the financial problems facing by the establishment especially because 50% of the employees contribution was trust money with the employer for deposit in the statutory fund. The delay in deposit of his part of the contributions amounted to breach of trust.

10. Identical view was taken by Hon`ble Co-ordinate Benches of this Court in **M/s Nijjar Agro Foods Limited; Patiala Co-operative Sugar Mills Ltd.; and M/s Shivon International's cases (supra)**.

11. As per view taken by Hon`ble Apex Court in **M/s Hindustan Times Ltd.'s case (supra)** and **Organo Chemical Industries' case (supra)**, the plea taken by the Management, that there were financial

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constraints with them to deposit the amount, is not a justified ground at all to delay the deposit of amount with the Provident Fund authorities, the same being “trust money”. Learned Appellate Tribunal has completely ignored this fact while passing the impugned order dated 24.01.2011 (Annexure P/3).

12. In view of the law laid-down by Hon`ble Apex Court and Coordinate Benches of this Court, the present writ petition is allowed and the impugned order dated 24.1.2011 (Annexure P/3) passed by the Appellate Tribunal is set-aside.

(SHEKHER DHAWAN)
JUDGE

July 25, 2018.

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes