IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 **CWP-22865-2013 (O&M)**
Date of decision:30.04.2018

Swaraj Engines Ltd.

...Petitioner

Versus

Regional Provident Fund Commissioner and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Pankaj Jain, Advocate for the petitioner.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for respondents No.1 to 3.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has prayed for the following relief :-

> *"(i) issue a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned order 07.07.2011 passed by respondent No.2 (Annexure P-1) being without jurisdiction, illegal and consequential Show Cause Notice issued by respondent No.3 against the petitioner (Annexure P-4) and order dated 03.10.2013 passed by respondent No.3 u/s 8-F of Employee's Provident Fund and Misc. provisions Act, 1952 (Annexure P-6) whereby the attachment of accounts of the petitioner has been ordered; for stay of*

the operation of the impugned orders (Annexure P1, P-4, P-6) passed by the respondents till the time the present writ petition is pending before this Hon'ble court;"

Due to default in making EPF contribution by the petitioner for a period of July, 2003, May, 2006 and January, 2007 respondent-EPF department issued show cause notice on 19.01.2011 under Section 14-B of the Employees' Provident Fund Act (For short 'EPF Act'). Petitioner failed to submit his reply to the show cause notice. Further he had been given opportunity on 01.02.2011, 24.02.2011 and 05.04.2011 and it was not availed by him. Thus, EPF department proceeded to levy damages under Section 14-B and 7Q for interest. Petitioner has not filed any memorandum of appeal before the EPFAT/CGIT. On the other hand on 21.07.2011 submitted representation while pointing out that EPF contribution for the relevant period was deposited timely in the year 2003, 2006 and 2007 on 11.08.2003, 13.06.2006 and 12.02.2007 respectively. Same was not appreciated by the department. Further petitioner had apprised the EPF department on 26.07.2011 in respect of transfer of employees from other companies to the petitioner Company. Whereas Recovery Officer proceeded to issue show cause notice relating to why arrest warrant should not be issued to the petitioner-authorized signatory of the company. Thereafter, on 26.09.2013 petitioner further clarified in respect of payment of dues. The same was not taken into consideration. Consequently, recovery officer passed an order on 03.10.2013. Hence the present petition insofar as Recovery Officer's action.

2. Learned counsel for the petitioner vehemently contended that

they have deposited the requisite EPF contribution timely as is evident from Annexure P2 along with the challan in 3 spells. The same has not been taken into consideration by the respondent-department so also they have not appreciated. Consequently, further proceedings of the Recovery Officer are illegal. It was also submitted that when factual aspects have been brought to the notice of the department in respect of EPF contribution question of levying damages or interest is not attracted. Hence impugned actions are liable to be set aside.

3. Per contra, learned counsel for the respondents while resisting the petitioner's contention submitted that notice was issued to the petitioner in respect of taking action under Section 14-B on 19.01.2011 whereas petitioner has not submitted his reply. So also there was no response from him when a personal hearing was offered to the petitioner on 01.02.2011, 24.02.2011 and 05.04.2011. It was also submitted that as long as determination of damages and interest vide order dated 30.06.2011 of the Assistant Provident Fund Commissioner, Chandigarh Region is not challenged petitioner's contention relating to action of the Recovery Officer may not hold good. Recovery Officer's action is in pursuance to the order passed on 30.06.2011 under Sections 14-B and 7Q of the EPF Act. Therefore, petitioner has not made out a case so as to interfere with the action of the Recovery Officer.

4. Heard the learned counsel for the parties.

5. No doubt there is some document to show that petitioner has deposited EPF amount on 11.08.2003, 13.06.2006 and 12.02.2007 it was

bounden duty of the respondents to examine those challans read with the deposit made by the petitioner. What has been stated in the reply statement is simply denial. It is true that petitioner has not responded to the show cause notice issued on 19.01.2011 under Section 14-B so also there is no challenge to the order dated 30.06.2011. That apart petitioner has not stated in his representation dated 21.07.2011 to the extent that he has not received the notice issue on 19.01.2011 in respect of determination of damages as well as interest under Sections 14-B and 7-Q of the EPF Act. Having regard to the conduct of the petitioner in not availing remedy at appropriate stage, petitioner is liable to pay cost of the proceedings and litigation to the tune of Rs.1 Lac to the EPF department within a period of 4 weeks from today. EPF department is hereby directed to re-examine to the extent whether petitioner's had paid EPF contribution for the assessment period stated in 14-B order dated 30.06.2011 like July, 2003, May, 2006 and January, 2007. If EPF contribution was deposited timely, necessary order be passed. If the respondent-department are disputing, in that event concerned respondent is hereby directed to issue show cause notice to the petitioner to what extent there is error committed by the petitioner insofar as depositing EPF amount for the relevant period. Thereafter, petitioner is hereby directed to file a detailed reply/explanation on the show cause notice within 60 days from the receipt of the show cause notice to be served by the department. Competent authority is hereby directed to pass a detailed speaking order whether Annexure P1 is in terms of the factual aspects or not within a period of 3 months from the date of receipt of the petitioner's explanation on the show cause notice.

6. With the above observation CWP stands disposed of.

(P.B.BAJANTHRI)
JUDGE

30.04.2018
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No