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

% *Date of Judgment: 12.02.2018*

\+ **W.P. (C) 8889/2015**

M/S. TOPS SECURITY LTD. .... Petitioner

Through: Mr.Rajiv Shukla, Advocate with Mr.Shubham Saxena, Ms.Shivani Kapoor and Mr.Lakshay Mangla, Advocates.

versus

CENTRAL BOARD OF TRUSTEES (CBT), EPF & ANR. ..... Respondent

Through: Ms.Inderjeet Sidhu, Advocate with Ms.Suchitra Chawla, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. The petitioner has invoked the writ jurisdiction of this court under Article 226 & 227 of the Constitution of India for setting aside the order dated 03.07.2015 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (in short 'Tribunal') in Appeal No. ATA-628(4)2015.

2. The facts giving rise to the writ petition, bereft of unnecessary details, are that the petitioner company failed to remit the

Provident Fund and allied dues for the period from December, 1997 to August, 2014 within the stipulated time frame i.e. within 15 days from the close of every month as required under Para 38 of the Employees' Provident Fund Scheme, 1952 (in brief 'EPF scheme'). A show cause notice dated 18.12.2014 under Section 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'EPF Act') was issued to the petitioner by the Employees' Provident Fund Organization. Ultimately, by order dated 27.04.2015, Assistant Provident Fund Commissioner, Delhi (South) in exercise of his powers conferred under Section 14-B and 7-Q of the EPF Act assessed the damages for the relevant period to the tune of Rs.31,58,286/- and interest at a sum of Rs.20,62,601/- thus amounting to total sum of Rs.52,20,887/-. The petitioner by this order dated 27.04.2015 was directed to pay the amount within 15 days.

3. The petitioner company preferred an appeal against the aforesaid order dated 27.04.2015 issued by the Assistant Provident Fund Commissioner before the Tribunal under Section 7-I of the EPF Act.

4. Before the Tribunal it was argued by the petitioner that there is no requirement of pre-deposit of any amount at the time of filing the appeal. However, on behalf of the respondent, it was argued that pre-deposit is mandatory at the time of filing of the appeal under Section 7-O of the EPF Act. The Tribunal after

quoting section 7-O of the EPF Act held that a simple reading of section 7-O of the EPF Act duly reveals that it is mandatory for the appellant to deposit 75% of the assessed amount at the time of filing an appeal, if order has been passed by the Commissioner under Section 7-A of the EPF Act and admittedly the appeal was against the order passed under Section 14-B of the Act and not under Section 7-A of the Act. The Tribunal also observed that the petitioner/appellant was supposed to deposit the assessed amount under Section 7-Q of the Act as the order under Section 7-Q is not appealable. The Tribunal stayed the impugned order till further orders subject to the petitioner/appellant depositing the amount assessed under Section 7-Q of the Act with the concerned authority within 45 days, failing which the operation of the order shall be vacated automatically.

5. Learned counsel for the petitioner argued that as the Tribunal has wrongly held that order under Section 7-Q of the EPF Act is not appealable, it had directed the appellant to deposit the assessed amount under Section 7-Q of the EPF Act. He submits that it is a composite order under Section 14-B read with Section 7-Q of the EPF Act and is thus appealable.

6. On the other hand, learned counsel for the respondent argued that the amount directed to be deposited by the petitioner was not a "pre-deposit amount" for filing the appeal rather it is a

conditional order to deposit the amount for the purpose of granting interim relief during subsistence of appeal.

7. At this juncture, it would be relevant to refer to Section 7-I of the EPF Act, which reads as under: -

> **"7–I. Appeals to the Tribunal. –** (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section 3, or sub-section 4, of section I, or section 3, or sub-section 1 of section 7A, or section 7B except an order rejecting an application for review referred to in sub-section 5 thereof, or section 7C, or section 14B may prefer an appeal to a Tribunal against such order.
>
> (2) Every appeal under sub-section 1 shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

8. On a bare perusal of the aforesaid provision, it is evident that an appeal to the Tribunal lies in respect of certain action on the part of the Central Government or any Authority on certain provisions of the Act. On a studied scrutiny, it is quite vivid that though an appeal lies against recovery of damages under Section 14-B of the EPF Act, no appeal is provided for against imposition of interest as stipulated under Section 7-Q of the EPF Act. It is seemly to note here that Section 14-B of the EPF Act has been enacted to penalise the defaulting employers as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to the employers in general forbidding them from committing a breach of the statutory requirements but also at the same time meant to provide

compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. The entire amount of the damages assessed and awarded under Section 14B of the EPF Act except for the amount relating to administrative charges is required to be transferred to the Employees' Provident Fund.

9. Here it would also be profitable to refer to Section 7-Q of the EPF Act, which reads as follows: -

> "**7-Q.** The employer shall be liable to pay simple interest at the rate of twelve per cent 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."

10. Under this provision the employer can be burdened with simple interest @ 12% per annum or at the rate as may be specified in EPF Scheme on any amount due on him from the date of which the amount has become so due till the date of its actual payment.

11. To deal with the rival contentions of the parties, it is also relevant to refer to Section 7-O of the EPF Act, which provides as under: -

> "**7–O. Deposit of amount due, on filing appeal. –** No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per

> cent of the amount due from him as determined by an officer referred to in section 7A:
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> Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

12. It is as clear as crystal from a bare reading of section 7-O of the EPF Act that whenever an order has been passed under Section 7-A of the EPF Act, the appeal filed by an employer shall not be entertained by the Tribunal unless the employer deposits with it 75% of the assessed amount under Section 7-A of the EPF Act. However, the Tribunal may for the reasons to be recorded in writing waive or reduce the amount to be deposited under this section. Admittedly, the order impugned before the Tribunal was not under Section 7-A of the EPF Act but a composite order under Section 14-B and 7-Q of the EPF Act, therefore, the petitioner was not entitled to pre-deposit any amount as assessed under Section 14-B and 7-Q of the EPF Act.

13. In fact, this question has been considered by the **Hon'ble Supreme Court** in the case of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and Others,** ***(2013) 16 SCC 1,*** wherein it was held that when a composite order under Section 7-A and 7-Q is passed together, such an order shall be appealable under Section 7-I of the EPF Act. It was further observed by the Apex Court that if for some reason the authority chooses to pass an independent order under Section 7-Q, the same is not appealable.

14. The impugned order dated 27.04.2015 before the Tribunal was also a composite order passed under Section 14-B and 7-Q of the EPF Act and therefore in view of the judgment of the Apex Court in the aforementioned case of **Arcot Textile Mills Limited** ***(supra)***, such order impugned before the Tribunal was appealable.

15. Regarding the power of Tribunal to grant interim relief during subsistence of appeal subject to certain conditions, the learned counsel for the respondent has relied upon Para No. 15 & 19 of a judgment of the Division Bench of this court in **Jai Balaji Security Services (Regd.) Vs. A.P.F.C. Delhi (North)** in ***LPA No. 880/2015 decided on 16.12.2015,*** which read as under: -

> **"15. But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay.** Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, **but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders."**

> "19. We reiterate once again. Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. **The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where demands raised under Section 7-Q and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the Proviso to Section 7-O of the Act."**

16. It is conveyed from the above said judgment of the Division Bench of this court that the Tribunal would be empowered to pass a conditional order of stay during the pendency of appeal where the demand raised under Section 14-B and 7-Q of the EPF Act has been challenged. Mere pendency of appeal would not prohibit the EPF Authority to effect recovery unless Tribunal stays the recovery by interim order during subsistence of appeal subject to certain conditions.

17. While considering the facts of the present case in the light of the aforesaid legal position, it is found that by impugned order the Tribunal has not directed the petitioner to deposit the amount assessed under Section 7-Q of the EPF Act with the concerned authorities within 45 days as a pre-deposit. However, from a close scrutiny of the impugned order of the Tribunal, it is found that the Tribunal has directed the petitioner to deposit the entire amount as assessed under Section 7-Q of the EPF Act under a

wrong impression that the order under Section 7-Q of the EPF Act is not appealable.

18. In view of the judgment of the Apex Court in **Arcot Textile Mills Limited** ***(supra)***, at the cost of repetition, the order dated 27.04.2015 impugned before the Tribunal was a composite one falling under Section 14-B and 7-Q of the EPF Act and thus appealable. However, in view of the judgment of the Division Bench of this court while considering the legal position so discussed, during the pendency of the appeal the competent authority would not be prohibited to effect the recovery of the assessed damages and interest unless the Tribunal passes an interim order concerning the demand subject to certain condition including deposit of assessed amount or part thereof.

19. The Tribunal has passed the order under a wrong impression on the legal position that the order under Section 7-Q of the EPF Act is not appealable in contrast to the judgment of the Apex Court in **Arcot Textile Mills Limited** ***(supra)***. Since the Tribunal has directed the petitioner to deposit the amount of interest as assessed under Section 7-Q of the EPF Act under the wrong impression as mentioned above, the impugned order dated 03.07.2015 of the Tribunal is hereby set-aside with the direction that the Tribunal shall decide the request for granting interim relief afresh on such terms and conditions as it may deem fit in the facts and circumstances of the case during the pendency of the appeal.

20. The petition is disposed of accordingly.

(VINOD GOEL)
JUDGE

FEBRUARY 12, 2018
"shailendra"