

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 01.04.2019****CWP No.14036 of 2016**

Central Board of Trustees through Regional Provident Fund Commissioner

...Petitioner

Vs.

Vajra Golden Lion Canteen

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Hooda, Advocate, for the petitioner.

Mr. Vivek Singla, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition deserves to succeed; firstly, because the issue of clubbing of three activities to form one establishment for coverage under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 has attained finality in favour of the Employees' Provident Fund Organisation and against the respondent-Vajra Golden Lion Canteen in a concluded previous litigation. The three components were the Canteen, Filling Station and LPG Gas Agency housed and run in one premises. This was because the Employees Provident Fund Appellate Tribunal, New Delhi had ruled in favour of the Organisation on 18.03.2016. The respondent does not dispute this fact. Once clubbing is final, recovery will follow automatically.

2. The second reason why this petition deserves to succeed is that the appeal before the Presiding Officer, EPFAT, New Delhi was filed

belatedly after a lapse of more than 300 days. Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 provides that any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order prefer an appeal to the Tribunal; provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. There is no provision for entertaining an appeal beyond the period of 120 days.

3. I had an occasion to deal with this aspect in CWP No.5201 of 2000 (O&M) titled 'Regional Provident Fund Commissioner, Ludhiana Vs. Employees Provident Fund Appellate Tribunal, New Delhi & another' decided on 20.04.2017 and reached the conclusion that benefit of Section 14(2) of the Limitation Act, 1963 is not available to the aggrieved party. Reliance had been placed on rulings in The Commissioner of Sales Tax, UP, Lucknow Vs. Prason Tool & Plants, Kanpur, (1975) 4 SCC 22; APFC Vs. EPFAT, 2006 (2) LLJ 388; Saint Soldier Modern Sr. Sec. School Vs. RPFC, 2014 (18) SCT 609 and Hindustan Times Ltd. Vs. UOI & others, (1998) 2 SCC 242 to support the conclusion that there is no inherent power with the authorities or the Tribunal to condone delay in presenting an appeal against an order passed under the Act, 1952. The judgment in Yeshwant Sahakari Kamgar Bank Vs. Assistant Provident Fund Commissioner, 2007 (3) Mah. LJ 334 cited by the establishment in that case was found to be distinguishable on facts and of no help to answer the issue on limitation.

4. On the other hand, Mr. Singla has tried to explain that against the orders passed by the Authorities, suit was filed in District Courts, Jalandhar by the respondent, not once, but at two stages even when the civil court had no jurisdiction to entertain or decide those suits. This has caused considerable delay. He submits that for wrong legal advice the establishment cannot be penalized. Be that as it may, any advice of this kind contrary to law cannot be accepted or held to be bona fide because none can feign ignorance of the law and overlook the specific bar under the 1952 Act that a suit would not lie in a civil court for a cause of action of which arises from orders passed by the authorities acting under the provisions of the 1952 Act.

5. Mr. Hooda has placed reliance on the judgment of the Supreme Court in M/s S.K.Nasiruddin Beedi Merchant Ltd. Vs. Central Provident Fund Commissioner & another, AIR 2001 SC 850 to effectively repel the contention of Mr. Singla and thereby knock out the reasoning adopted by the Tribunal that the respondent cannot be compelled to deposit contributions towards the employees' share for lack of records. He refers to para.6 of the judgment where this aspect is specifically dealt with by the Supreme Court, which reads as follows:

“6. So far as the second contention is concerned, the argument of the learned counsel proceeds on the basis that the liability was not clear in view of the various circumstances and, therefore, deduction could not be made from the wages of the employees and that circumstance leads to anomalous position making the employer to pay the employees contribution towards provident fund without the facility of deduction from their wages. We do not think that this argument is well

founded. The applicability of the Act to any class of employees is not determined or decided by any proceeding under Section 7-A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7-A of the Act is only determination or quantification of the same. Therefore, the contention put forth on behalf of the appellant that their liability was attracted only from the date of determination of the matter under Section 7-A of the Act does not stand to reason. Indeed, the coverage was indicated to the appellant as early as in January 1977, as already noticed by us. In fact, the Government issued a clarification that the employees' share of contribution from pre-discovery period which has not been deducted from the wages of employees shall not be recovered and that pre-discovery period is explained in the following terms:

(i) Pre-discovery period : This will include the period commencing on the date from which the Act is legally applicable to factory or establishment and the date on which a formal notice for coverage under the Act is served on the employer by the employer by the provident fund authorities. In all such cases, the employees share of contribution shall be payable from the first of the month following the issue of the notice for coverage under the Act.

(ii) Period covered by general stay order given by the Supreme Court on the application challenging the notification extending the provisions of the Act to an industry/class of establishments: This will include the period from

the date of extension of the Act to the date of final judgment of the Court. In all such cases, the employees share of contribution shall be payable from the first of the month following the judgment.”

6. However, the amounts determined by the authority have already been deposited by the respondent/establishment and that can be appropriated and adjusted by the Organisation in their account of provident contributions maintained for disbursement to workers entitled to benefits under the schemes at the appropriate time.

7. As a result, the instant petition is allowed. The impugned order passed by the Employees Provident Fund Appellate Tribunal, New Delhi on 18.03.2016 in ATA No.21 (11) 2014 is set aside as the reasoning adopted therein is entirely perverse holding that employees’ share for the relevant period is excused from deposit by the Vajra Golden Lion Canteen only because they have not in their possession the record of workers, which was a statutory duty to honestly maintain for production, whenever required by the authorities in proceedings under Section 7A of the Act for determination of moneys due from an employer.

01.04.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>