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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 07.11.2019

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W.P.(C) 10876/2017 & C.M.No.44532/2017

CENTRAL BOARD OF TRUSTEES EPFO THROUGH APFC
DELHI (SOUTH)

..... Petitioner

Through Mr.Satpal Singh, Adv.

versus

KENDRIYA BHANDAR

..... Respondent

Through Ms.Rani Chhabra with Mr.J.P.Jain,
Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the Central Board of Trustees EPFO assails the order dated 26.05.2014 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No.403(4)2014. Under the impugned order, the Tribunal while admitting the respondent's appeal against the assessment order dated 22.04.2014 passed by the petitioner under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('the EPF Act' for short), has granted complete waiver from pre-deposit to the respondent.

2. The petitioner, alleging that the respondent had defaulted in paying the requisite provident fund dues, had initiated an inquiry under Section 7 (A) of the EPF Act. After granting due opportunity of hearing to the respondent, the petitioner passed an assessment order

on 22.04.2014 holding the respondent liable to pay a sum of Rs.6,31,707/- on the ground that the respondent was the principal employer and, therefore, liable to remit the dues in respect of the employees engaged by one M/s Shramika Kutir Udyog.

3. Aggrieved by this assessment order, the respondent approached the Tribunal by way of an appeal under Section 7(I) of the EPF Act, alongwith an application seeking waiver of the 75% pre-deposit, mandated in terms of Section 7(O) of the EPF Act. The Tribunal, while admitting the appeal under the impugned order, also granted complete waiver to the respondent from pre-deposit by exercising its powers under the proviso to Section 7(O) of the EPF Act and it is this grant of waiver which is being assailed in the present petition.

4. Learned counsel for the petitioner submits that the impugned order fails to adhere to the express stipulations of the EPF Act; although the Act empowers the Tribunal to grant complete waiver of pre-deposit, it also sets down that such grant can only be made after carefully recording the reasons for the same, in writing. In the present case, however, the impugned order fails to record any reasons warranting the grant of such waiver. He further submits that in view of the admitted position emerging from the assessment order that the respondent had not raised any objection to the calculations made by the petitioner/department, it was evident that the respondent was liable to pay the amount in terms of the assessment order and, therefore, there was no reason for granting complete waiver of pre-deposit to the respondent. He prays that the impugned order be set aside.

5. On the other hand, learned counsel for the respondent supports

the impugned order and submits that there is absolutely no infirmity therein. She submits that the Tribunal, in exercise of its discretion under Section 7 (O) of the EPF Act, while admitting the appeal decided to allow the respondent's application for complete waiver after considering the entire facts of the case. She further submits that the present petition has been filed belatedly as even though the impugned order was passed on 26.05.2014, the present writ petition came to be filed only in November 17, 2017, i.e. after a delay of three and a half years. She, therefore, prays that the writ petition be dismissed.

6. I have considered the submissions of learned counsel for the parties and with their assistance perused the record. From a perusal of the impugned order, I find that the Tribunal has, after recording the factual position, proceeded to deal with the question of grant of waiver by specifically observing that the respondent (appellant before the Tribunal) had a strong case in its favour. An important factor which weighed with the Tribunal while granting the waiver was the respondent's plea that M/s Shramika Kutir Udyog were not exclusively carrying out work for the respondent and, therefore, it could neither be held as its principal employer nor could it be saddled with the liability of paying the provident funds dues of the employees of M/s Shramika Kutir Udyog. I, thus, find no merit in the petitioner's contention that the Tribunal did not record any reason for granting waiver, as the impugned order clearly mentions the Tribunal's view that the respondent /appellant before it had a strong case on merits.

7. Once the proviso to Section 7(O) of the EPF Act specifically

empowers the Tribunal with the discretion to grant complete or partial waiver to an appellant from the rigours of making pre-deposit, after recording reasons for such grant, it cannot be urged that even if the Tribunal finds a strong prima facie case in favour of the appellant, it should not exercise such discretion. In my view, once the provisions of the EPF Act itself vests the Tribunal with the power to exercise its discretion for grant of waiver from pre-deposit by recording reasons, it cannot be said that reasons provided by the Tribunal must necessarily be detailed and exhaustive.

8. I also do not find any merit in the petitioner's contention that merely because the respondent had not disputed the calculations made by the petitioner at the time of passing the assessment order, it implies that the respondent had admitted its liability. In fact, all along the entire case of the respondent has been that since M/s Shramika Kutir Udyog was not exclusively performing work for the respondent, it could not be held liable for paying the provident fund dues of its employees. In any event, it is also noted that the appeal before the Tribunal has remained pending since 2014 and, yet, the petitioner chose to assail the order granting waiver from pre-deposit after an inordinate delay of three and a half years. On this ground also, no interference is warranted with the impugned order at this belated stage.

9. The writ petition, being meritless, is dismissed along with the pending application.

10. Keeping in view the fact that the respondent's appeal has remained pending for more than five and a half years, the Tribunal is

requested to expeditiously decide the matter, preferably within a period of six months.

11. It is further made clear that this Court has not expressed any opinion on the merits of the case and it will be open for the Tribunal to examine the appeal in accordance with law.

REKHA PALLI, J

NOVEMBER 07, 2019

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