IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1161 OF 2020

Central Board of Trustees,
Employees Provident Fund ...Petitioner
vs.
M/s.Cambata Aviation Pvt.Ltd. ...Respondent

Mr.B.M. Chatterji, Senior Advocate with Vishesh Srivastav, Kavita Singh, Priyank Sharma I/b. Ravi Rattesar for Petitioner.
Mr.S.C. Naidu for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 5 FEBRUARY 2020

P.C. :

Heard learned Counsel for the parties.

2 This civil writ petition challenges an order passed by Central Government Industrial Tribunal-2, Mumbai ("CGIT") directing the Petitioner herein to refund the amount recovered by them in pursuance of an order passed by Regional Provident Fund Commissioner under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act"). The Respondent herein, who is an establishment covered under the Act, was said to have defaulted in payment of contributions due under the Act and the schemes framed thereunder for various months. Pursuant to the show cause notice issued and inspection of records, various notices were issued to the Respondent for levy of penalty for default in payment of statutory contributions for the concerned months. The Regional Provident Fund Authority after

hearing the Respondent, by order dated 27 April 2018 / 1 May 2018, ordered levy of damages amounting to Rs.6,55,34,829/- against the Respondent. The Respondent carried the matter in appeal under Section 7-I before CGIT, who, by its order dated 6 June 2019, waived the condition of pre-deposit and instead, directed the Respondent to deposit a sum equivalent to 10% of the assessed amount with the Petitioner herein. In the meantime, by an attachment order under Section 8F of the Act, issued for recovery of Provident Fund dues, the Petitioner herein attached the bank account of the Respondent. The Respondent’s bank was directed to deposit the entire amount assessed on account of Provident Fund dues as well as damages under Section 14B of the Act and interest. It appears that a total sum of Rs.14,08,22,767/- was recovered from the Respondent's bank, Kotak Mahindra Bank, towards the total dues. This amount included a sum of Rs.7,67,33,428/- which was purportedly towards the damages assessed under Section 14B of the Act. The Respondent challenged the action of the Petitioner before CGIT; who, by its order of 6 June 2019, directed defreezing of the Respondent’s account and refraining from taking any further coercive steps. Since the account continued to be frozen and the amount was recovered from the bank account, as noted above, CGIT, by its further order dated 10 July 2019, issued a show cause notice to the Petitioner herein to explain circumstances as to why contempt proceedings should not be initiated against him. In pursuance of the show cause notice, by a further order dated 10 July 2019, the Petitioner was directed to refund the excess recovered amount of Rs.7,67,33,428/- to the Respondent. This was followed by a further order dated 17 September 2019, by which the Petitioner's application for deposit of the amount in court instead of refunding the same to the Respondent was rejected by CGIT. Finally, by its last order dated 21 November 2019, the CGIT issued a contempt notice against the Petitioner herein calling upon it to reply within ten days. The orders of CGIT dated 22 August 2019, 17 September 2019, 21 November 2019 and Show Cause Notice of 22 November 2019 are all challenged by the Petitioner in the present petition.

3 Whilst it is true that the assessee has an opportunity of challenging any assessment made by the Competent Authority under Section 14B of the Act and whilst it is also true that the condition of pre-deposit can very well be waived for entertaining an appeal, it is equally true that the Provident Fund Act gives special powers to the authorities under the Act for recovery of the assessed amounts *inter alia* by way of attachment of bank accounts and recovery of the amounts from the banks by way of garnishee notices. The Provident Fund Authorities have proceeded to attach the Respondent’s bank account and recover the dues, even whilst the Respondent's appeal from the original order of levy of damages under Section 14B was pending before CGIT, alleging special circumstances.

4 After the parties are heard at some length, after taking into account the submission of the Petitioner herein that the amount recovered towards damages under Section 14B may be deposited before CGIT so as to await further orders by it, this court is of the view that the petition may be conveniently disposed of by directing CGIT to determine the pending main appeal and in the meantime, requiring the Petitioner

to deposit the entire amount of Rs.7,67,33,428/- before CGIT so as to abide by further orders to be passed by CGIT.

5 Whilst disposing of the petition, it cannot be lost sight of that the assessment of the amount under Section 14B has been for a sum of Rs.6,55,34,829/-. There is no order of any further recovery. In that case, there is reason why any amount over and above Rs.6,55,34,829/- should be retained by CGIT towards the pending appeal.

6 The writ petition is, accordingly, disposed of in terms of the following order :

(I) The impugned orders of CGIT dated 22 August 2019, 17 September 2019, 21 November 2019 and Show Cause Notice of 22 November 2019 are quashed and set aside;

(II) CGIT is requested to dispose of the main appeal, i.e. Appeal No.CGIT-2/EPFA/50 of 2018, as expeditiously as possible and preferably within a period of four months from today;

(III) The Petitioner herein shall deposit with CGIT an amount of Rs.7,67,33,428/- within a period of two weeks from today;

(IV) CGIT shall retain a sum of Rs.6,55,34,829/-

from out of this amount and invest that amount in a Fixed Deposit of a Nationalised Bank for a suitable period. This amount shall abide by final orders that may be passed by CGIT in the pending appeal;

(v) From the amount deposited by the Petitioner herein, the sum in excess of Rs.6,55,34,829/- shall be refunded by CGIT to the Respondent;

(vi) In case, the Respondent herein has to meet any particular statutory liabilities, the Respondent will be at liberty to apply to CGIT for disbursal of amount/s from out of the amount of Rs.6,55,34,829/- lying deposited with CGIT in terms of this order. Any such application shall be considered on its own merits and all rights and contentions of the parties in that behalf are kept open.

7 It is made clear that this order is passed in the special facts and circumstances of the case and shall not be treated as a precedent for any order of pre-deposit or otherwise in an appeal from any order passed under Section 14B of the Employees' Provident Funds Act.

(S.C. GUPTE, J.)