

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CM-3343-CWP-2018 in/and
CWP No.7217 of 2007 (O&M)
DATE OF DECISION: 08th AUGUST, 2022

M/s Continental Gears Private Limited

.... Petitioner

Versus

Employees Provident Fund Appellate Tribunal and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Nitin Thatai, Advocate and
Ms. Rupali, Advocate for the petitioner.

Mr. Rajesh Hooda, Advocate
for applicant/respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

CM-3343-CWP-2018

This is an application for vacation of stay order dated 06.07.2007, whereby the applicant/respondent No.2 was restrained from taking any coercive steps against the petitioner.

Since, the main petition itself is already on regular board, therefore, on the request of learned counsel for both the parties, the main petition itself is taken up for hearing.

The application is disposed of as infructuous.

Main Case

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for

quashing of order dated 22.02.2007 (Annexure P-9) passed by respondent No.1 and orders dated 09.10.2006, 05.05.2004 and 07.04.2005 (Annexures P-7, P-4 and P-5) passed by respondent No.2.

The case of the petitioner, in nutshell, is that the petitioner was engaged in activity of manufacturing cycle parts from a rented premise in village Dhandari Kalan, near Ludhiana. However, the petitioner-company suffered huge financial loss and therefore, closed its manufacturing activity on 31.01.1999. The premises, which was on the rent, was also vacated in August, 1999. After having wound up the entire activity, the intimation regarding the closure of the activity was communicated to the Area Provident Fund Inspector, Ludhiana vide communication dated 05.09.1999. However, the Area Provident Fund Inspector, Ludhiana had solicited certain information about the balance sheet etc. and also required the petitioner-company to pay the minimum administrative charges @ Rs.7/- per month for the period from February, 1999 to September, 2002. Even that amount was deposited by the petitioner-company and the necessary information, along with receipt of deposit was again communicated to the Area Provident Fund Inspector on 16.09.2002. The Area Provident Fund Inspector even sent a communication dated 24.09.2002 to the respondent No.2 stating that the factory stood closed and minimum administrative charges stood deposited. However, the respondent No.2 initiated proceedings under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act) and passed the impugned assessment order without hearing the petitioner, whereby the petitioner was required to deposit an amount of Rs.3,09,691/- on account of PF

contributions liability. The petitioner filed an application for setting aside the ex-parte proceedings and the order. However, that was rejected by the Assessing Officer being time barred. Thereafter, the petitioner filed the statutory appeal. However, even the said appeal was dismissed by the Appellate Authority as being time barred; vide order dated 22.02.2007. Accordingly, the present petition has been filed.

Arguing the case, learned counsel for the petitioner-company has submitted that the petitioner-company has gone totally unheard in the matter. Otherwise also, the assessment done by the authorities is totally baseless. The manufacturing activity of the petitioner-company already stood closed-down with due intimation to the respondent-authorities. Thereafter, there was no liability of the petitioner-company to pay any kind of dues to the Provident Fund Authority. Moreover, the assessment order has been passed by the Assessing Authority behind the back of the petitioner-company. Even, the application filed by the petitioner for being heard in the matter was wrongly rejected. The appeal filed by the petitioner has also been dismissed by the Appellate Authority without granting any opportunity of being heard, merely on the ground of being barred by limitation. The impugned orders passed by the respondent-authorities, which are otherwise passed behind the back of the petitioner, cannot be sustained under any provisions of the Act. There is no authority, given to any designated authority to assess the liability of the petitioner-company even after the closure of the factory. Hence, the orders deserve to be set aside.

On the other hand, learned counsel for respondent No.2 has submitted that the petitioner had not joined the proceedings of

assessment. Therefore, the respondent No.2 had no option but to proceed ex-parte. Qua the assessment order, the counsel has submitted that the assessment has been made only on the basis of records available with the department. Even, the appeal filed by the petitioner-company has been dismissed. The decision of the statutory authorities need not be interfered by this Court. Hence, the present petition deserves to be dismissed.

Having heard the counsel for both the parties, this Court finds substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that the intimation regarding the closure of the unit was furnished by the petitioner-company to the Inspector of the respondent-department on 05.09.1999. Although, there is no basis shown for the same, however, the respondent-department had raised demand of administrative expenses upto the year 2002. Even that was deposited by the petitioner. Even, the Inspector of the respondent-department had duly intimated to the authorities that the factory stands closed and that he had verified this fact after visiting the establishment and inspecting the record. Therefore, there is nothing on record to contradict the fact that the factory of the petitioner stood closed even as per the inspection by the respondent-department. There cannot be any liability of the petitioner under the Act to make contributions towards any benefit for the workman after the date of undisputed closure of the factory.

The respondent-department would have been right in disputing the factum of closure, and if factory was found to be not closed or found re-located or re-named, probably, then there would have been some basis for the assessment. However, even the impugned assessment order does not speak of the fact that the factory was running. In fact, the

fact of closure of the petitioner-company is not disputed even in the assessment order. Rather, the assessment order itself is totally non-speaking. The appeal was summarily dismissed on the ground of limitation. Therefore, the petitioner is right in contending that it had gone totally unheard.

Since, the factum of closure of the unit have gone uncontested, therefore, the respondent No.2 did not have any authority to assess the amounts leviable against the petitioner after the undisputed date of closure of the factory. Moreover, no reason for assessment is given in the order nor is the basis of calculation of amounts is disclosed.

In view of the above, the impugned orders dated 05.05.2004, 07.04.2005, 09.10.2006 and 22.02.2007 (Annexures P-4, P-5, P-7 and P-9) are set aside and the present petition is allowed.

CM-12134-CWP-2015

This is an application for addition of 'Central Board of Trustees' as respondent No.3 in the writ petition.

Since, the main case is disposed of today, therefore, the present application has been rendered infructuous and is disposed of as such.

The pending miscellaneous application, if any, is also disposed of as such.

08th AUGUST, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes