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

**CWP-24480-2015**
**Date of Decision: 09.11.2022**

M/s Bawa Shoes Private Ltd. ...... Petitioner

Versus

Employees Provident Fund Department and others ......... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. Rajesh Hooda, Advocate,
for the respondents.

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**RAJBIR SEHRAWAT, J. (ORAL)**

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the order dated 05.06.2015 (Annexure P-1) passed by the Employees Provident Fund Appellate Tribunal, New Delhi, vide which the statutory appeal filed by the petitioner was dismissed; as also seeking setting aside the order dated 19.09.2005 (Annexure P-2), along with certain other prayers.

The arguments of the learned counsel for the petitioner is that the Employees Provident Fund Appellate Tribunal has wrongly dismissed the statutory appeal filed by the petitioner-company on the ground of limitation. Although, the delay in filing the appeal was more than 10 years, however, that had happened because the order dated 19.09.2005 (Annexure P-2) was never communicated to the petitioner-company. It is further submitted that even during the assessment proceedings, neither the report from the Enforcement Officer was sought nor any opportunity of hearing was granted to the petitioner-company. Moreover, even the beneficiaries were not identified by the Assessing Authority. Hence, the original order dated 19.09.2005, as well as the appellate order dated 05.06.2015, both are illegal; and the same deserve to be set aside.

On the other hand, referring to the impugned order itself, learned counsel for the respondents has submitted that the report of the Enforcement Officer, namely, Kashmir Singh was duly received by the Assessing Authority. It is only thereafter that the assessment was made. So far as the details of the beneficiaries are concerned, learned counsel has submitted; that although the petitioner-company had refused to produce the record pertaining to the employees, however, the petitioner-company itself had deposited the dues earlier with reference to the same number of employees, therefore, the authority has taken a cue from that number and has passed the necessary order accordingly. Learned counsel for the respondents has further pointed out that during the assessment proceedings, the petitioner-company had duly appeared before the Assessing Authority and had itself produced the report regarding the earlier payments; as well as; had informed the authority that for the period in question, the necessary amounts could not deposited. Further, it was informed to the authority that the petitioner-company now stood closed. Still further, it is submitted by the learned counsel that the petitioner was having remedy of statutory appeal, provided the appeal was filed within limitation or within the period upto the appeal could have been entertained by the Appellate Tribunal. The limitation of filing the appeal, as prescribed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is 60 days and the Appellate Tribunal could have entertained the appeal, maximum, within the period of 120 days. Beyond the period of 120 days, the Appellate Tribunal did not have even the authority to condone the delay. Therefore, the Appellate Tribunal, as a statutory authority, has rightly passed the impugned order dated 05.06.2015 dismissing the appeal on the ground of limitation. Hence, the petition deserves to be dismissed. Learned counsel for the respondents has placed reliance upon the judgment of this Court rendered in **Mohan Lal Vs. Regional Provident Fund Commissioner, 2002(5) SLR 577**.

Having heard the learned counsel for the parties, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. It is not even in dispute that the impugned order was passed on 19.09.2005. The appeal in question was, indisputedly, filed on 21.05.2015. Therefore, it is obvious that there is a delay of about 10 years. Hence, the Appellate Authority has rightly declined the appeal filed by the petitioner-company on the ground of limitation. Although, to take a plea that the petitioner-company was not in the knowledge of the impugned order dated 19.09.2005, the learned counsel for the petitioner has submitted that the petitioner-company was not intimated about the order passed by the authority, however, the record shows that the order passed by the Assessing Authority was duly communicated at the address of the premises of the petitioner-company; and the same was also received by the employee/representative of the petitioner-company. Moreover, the limitation for filing the appeal is not dependent upon the communication of the order as such. The provision contained in Rule 7 of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997, speaks about the date of issue of the order as the starting point of the limitation. Hence, the appeal filed before the statutory Tribunal is, obviously, time barred. Otherwise also, issue of communication of order becomes irrelevant because the representative of the petitioner-company was very much present at the time of passing of the impugned order.

The next arguments of the learned counsel for the petitioner is that the petitioner was not granted proper opportunity of being heard by the Assessing Authority and that no report was obtained from the Enforcement Officer before passing the assessment order. However, both these assertions of the learned counsel for the petitioner are contrary to the record. The impugned order itself speaks about the report having been received from the Enforcement Officer Kashmir Singh before passing the impugned assessment order. So far as the hearing is concerned, the record shows that the Director of the Company, namely, Sharan Pal Juneja duly appeared before the authority; besides the representative of the petitioner-company being present before the Assessing Authority at the time of passing of the impugned order. If, despite being present and being represented, the petitioner-company had chosen not to effectively participate in the proceedings and not to show the record to the authority, then the Assessing Authority cannot be blamed by the petitioner by asserting that the petitioner was not granted opportunity of being heard. Hence, even this argument of the learned counsel for the petitioner is liable to be rejected.

Lastly, learned counsel for the petitioner has also submitted that since there was no detail of beneficiaries available to the Assessing Authority, therefore, the order passed by the authority is bad. To support his arguments, he has relied upon the judgment of Hon'ble the Supreme Court rendered in the case of **Himachal Pradesh State Forest Corporation Vs. Regional Provident Fund Commissioner, 2008-III-LLJ-581 (SC),** however, a perusal of the said judgment itself shows that; in that case, the assessment was made after 16 years whereas, in the present case, the assessment was made within a period of about one year. Moreover, the petitioner-company itself admitted depositing the amount as per the particular strength of the eligible employees. Therefore, even this argument of the learned counsel for the petitioner is without any basis.

In view of the above, finding no merit in the present petition, the same is dismissed.

**(RAJBIR SEHRAWAT)**
**JUDGE**

**09.11.2022**
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No