109+251 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CM-16753-CWP-2022 IN
CM-2197 to 2199-CWP-2020 IN/AND
CWP-8273-2016
Date of Decision: 12.12.2022

M/s Harmony Urban Spaces Pvt. Ltd. ...... Petitioner

Versus

Appellate Tribunal and another .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. A.K.Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate,
for the applicant/petitioner.

Mr. Sanjay Tangri, Advocate,
for respondent No.2.

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RAJBIR SEHRAWAT, J. (ORAL)

CM-2197-CWP-2020

Allowed, as prayed for.

CM-2198-CWP-2020

This is an application for condoning the delay in making compliance of the order dated 09.09.2016.

Notice of motion.

Learned counsel for respondent No.2 has filed reply to the application, which is taken on record.

After hearing learned counsel for the parties, this application is is allowed and the delay in making compliance of the order dated 09.09.2016 is condoned.

CM-2199-CWP-2020 IN/AND
CWP-8273-2016

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for quashing of the order dated 11.04.2016 (Annexure P-10) passed by respondent No.1 in appeal against the order dated 19.02.2015 (Annexure P-5) passed by respondent No.2; for ordering recovery of Rs.46,36,914/-.

The facts and brief of the case are that the petitioner-company had, allegedly, not deposited the provident fund contribution as required under the law. Therefore, the Assessing Authority had made an assessment against the petitioner-company holding it liable to deposit Rs.46,36,914/- for the period from January, 2011 to October, 2013. Under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the PF Act'), the petitioner-company had right to file statutory appeal. That statutory appeal was filed as well; though, beyond the prescribed period of limitation. Therefore, the Appellate Authority had dismissed the appeal on the ground of delay. Hence, the present petition.

Learned counsel for the petitioner has submitted that there is no dispute qua the fact that the petitioner-company had not preferred the statutory appeal within the prescribed time period, however, the delay in filing the appeal had happened for the reasons beyond the control of the petitioner-company. There was some dispute in the management of the petitioner-company and the company was not functioning on account of lack of proper management. After gathering the things and improvement in the situation, the petitioner-company preferred the statutory appeal, however, the same had wrongly been dismissed by the Appellate Authority on the ground of delay. The petitioner-company deserves a hearing in appeal.

On the other hand, learned counsel for respondent No.2 has submitted that the Assessing Authority had rightly assessed the amount against the petitioner-company. The petitioner-company had opportunity to question the assessment by filing statutory appeal within the prescribed time. However, the petitioner-company had not filed the appeal within the time prescribed by the the PF Act. Under the PF Act, the appeal can be filed within a period of 60 days and thereafter, the Appellate Authority can entertain the appeal even beyond 60 days; but within 120 days of passing of the order. The appeal filed by the petitioner-company was even beyond 120 days of the passing of the original order. Hence, the Appellate Authority also had no jurisdiction to condone the delay. Accordingly, the order has rightly been passed by the Appellate Authority. The petition deserves to be dismissed.

After hearing learned counsel for the parties and having pursued the record, this Court finds that the original order was passed by the Assessing Authority on 19.02.2015. Of course the appeal was filed beyond maximum period of limitation and the same was dismissed, vide order dated 11.04.2016. Thereafter, the petitioner-company had approached this Court by way of the present petition in the year 2016. The writ petition was duly entertained by this Court and interim direction to the petitioner was passed to deposit 50% of the awarded amount; as a pre-condition for proceeding further with the writ petition. That condition having not been fully complied with, the writ petition was dismissed vide order dated 29.11.2016 by deeming fiction on account of non-deposit of 50% of the awarded amount as per the order dated 09.09.2016 passed by this Court. Thereafter, the petitioner-company filed an application, i.e CM-2199-2020 for revival of the writ petition on 04.02.2020. Now, the petitioner-company has even deposited 50% of the amount as was ordered by this Court vide order dated 09.09.2016. Even the learned counsel for the respondent No.2 submits that he has no objection if the order dated 29.11.2016 is recalled and the writ petition is restored to its original number. Therefore, the writ petition deserves to be restored.

In view of the above, the writ petition is restored to its original number and the same is taken up today itself for final hearing.

The PF Act prescribes the maximum period of limitation within which the statutory appeal could have been entertained by the Appellate Authority. In such a situation, the Appellate Authority is well within its authority to dismiss the appeal on the ground of limitation. Therefore, this Court does not find any ex facie illegality or impropriety with the order passed by the Appellate Authority; as such. However, there can be an unfortunate situation where despite best efforts, the parties cannot avail the right to appeal within the time limit. Moreover, the interest of justice and the principles of natural justice demand that every possible effort should be made that none goes unheard in the process of law. Keeping in view this aspect only; this Court had entertained the present petition and had directed the petitioner to deposit 50% of assessed amount. Substantial part of it already stood deposited, though the order was not fully complied with earlier. But now even that order stands complied with. Therefore, keeping in view the peculiar facts and circumstances of the present case, as well as, the previous order passed by this Court qua deposit of 50% of the awarded amount, which stands complied with now, this Court finds it appropriate to grant one more opportunity to the petitioner to be heard on merits by the Appellate Authority.

Accordingly, the order dated 11.04.2016 (Annexure P-10) passed by the Appellate Authority is set aside and it is ordered that the Appellate Authority shall hear the appeal on merits. However, it is further clarified that since the order in the present petition has emerged in peculiar facts and circumstances available in the case, including the previous orders passed by this Court, therefore, the present order is not intended to serve as a precedent for any other case.

The parties have further pointed out that the originally the appellate order was passed by the Employees Provident Fund Appellate Tribunal, New Delhi, however, now the jurisdiction for the area involved in the present case is conferred upon the Central Government Industrial Tribunal-II, Chandigarh. Therefore, it is further ordered that the parties shall appear before the said tribunal, on 17.01.2022. The said tribunal is also directed to take a final decision on the appeal filed by the petitioner within six months from the date of first appearance of the parties before it.

CM-16753-CWP-2022

This is an application for stay of recovery of balance amount, as sought to be made by respondent No.2, during the pendency of CM-2199-CWP-2020 in CWP-8273-2016.

Since the main petition has itself been disposed of, therefore, the present application has been rendered as infructuous.

Dismissed as having been rendered infructuous.

(RAJBIR SEHRAWAT)
JUDGE

12.12.2022
adhikari

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No