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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ W.P.(C) 5614/2022 & CM APPL. 16638/2022 (stay),
CM APPL.16639/2022 (for filing additional documents)

M/S SPC ENGINEERS PVT. LTD. Petitioner

Through: Mr. Vikas Nagwan, Advocate.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER ... Respondent

Through: Mr. Rajesh Kumar with Mr. Harshit
Garg, Advocates.

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*Date of Decision: 21st July, 2022.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. The present writ petition has challenged the order of the learned Central Government Industrial Tribunal (CGIT) dated 02.03.2022 in case bearing No.ATA No.D-1/07/2022. The petitioner had approached the learned CGIT against the order dated 15.12.2021, passed by the APFC cum Recovery Officer in exercise of the powers under Section 8B to 8G of the Employees Provident Fund & Misc. Provisions Act, 1952 (hereinafter referred to as 'the Act') directing the establishment to deposit Rs.14,99,785/- as the arrear PF dues of the employees. The respondent had taken an objection that the appeal challenging action under Section 8B to 8G of the Act is not maintainable. Learned Tribunal has *inter alia* held that a plain reading of the provision of Section 7I of the Act shows that the appeal is



maintainable against the orders passed in exercise of the power under Section 7-A or 7-B or 7-C or 14-B of the Act by the appropriate authority. It was further *inter alia* held that no order passed under Section 8B to 8G of the Act is appealable to the Tribunal.

2. Learned counsel for the petitioner has submitted that the Tribunal has fallen into a grave error and that in fact, the Tribunal had jurisdiction to entertain the appeal. It has been submitted that the decision of the appeal might have been either way but the Tribunal should not have reached to the findings that it has no jurisdiction. Learned counsel for the petitioner has relied upon Rule 7 of the Tribunal (Procedure) Rules, 1997, which is reproduced herein below:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal.—

(1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.



Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.”

3. Learned counsel for the petitioner submits that sub Rule (2) of Rule 7 specifically provides that any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order prefer an appeal to the Tribunal. Learned counsel for the petitioner submits that bare reading of this Rule makes it crystal clear that any notification issued by the Central Government can be challenged by way of filing of an appeal. Learned counsel for the petitioner submits that Rule 7 of the Tribunal (Procedure) Rules, 1997 does not confine the remedy of appeal to any particular provision. Learned counsel for the petitioner has further submitted that as a basic principle of interpretation of statute, there has to be harmonious construction and therefore Section 7I of the Act, 1952 has to be read harmoniously with the Rule 7 of the Tribunal (Procedure) Rules, 1997. Learned counsel for the petitioner further submits that the learned Tribunal should not have rejected the appeal on the ground of maintainability.

4. Mr. Rajesh Kumar, learned Standing Counsel for the respondent submits that the Tribunal has rightly rejected the appeal as being not maintainable.



5. Learned Standing Counsel has submitted that since Rule 7I of the Act, 1952 does not provide for an appeal against the order passed under Section 8B to 8G of the Act, therefore, the Tribunal has rightly rejected the appeal. Learned Standing Counsel has further submitted that the present petition is also liable to be rejected as there is no infirmity or illegality in the impugned order dated 02.03.222 passed by the Tribunal.

6. Section 7I of the Act, 1952 reads as under:-

“7-I. Appeals to Tribunal .-(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof, or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

7. Perusal of Section 7I of the Act, 1952 makes it clear that an appeal can be filed against an order passed under Section 7-A or 7-B of the Act (except an order rejecting the application for review referred to in sub-Section 5) or Section 7-C or Section 14-B of the Act. The legislature in its wisdom has not given right to appeal against the order passed under other provisions.

8. Rules have been framed by the Central Government by virtue of the powers conferred on it by the Parliament under Section 21 of Act, 1952.



9. In *M/s. Arcot Textile Mills Ltd. vs. The Regional Provident Fund Commissioner and others*, the issue of filing of an appeal against the order passed under Section 7Q of the Act came up before the Supreme Court and it was *inter alia* held as under:-

“16. Presently we shall refer to 7Q of the Act. It is as follows:-

“7Q. Interest payable by the employer.- The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.”

17. *Ms. Aparna Bhat, learned counsel for the respondent Nos. 1 to 3 would contend that the payment of interest by the employer in case of belated payment is statutorily leviable and a specified rate having been provided, the authority has no discretion and, therefore, it is only a matter of computation and there cannot be any challenge to it. Be it noted, it was canvassed by the said respondents before the High Court that an appeal would lie against an order passed under 7Q. On a scrutiny of Section 7I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these*



extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See: Ganga Bai v. Vijay Kumar and others, Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and Ors., State of Haryana v. Maruti Udyog Ltd. and others, Super Cassettes Industries Limited v. State of U.P. and another, Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, Competition Commission of India v. Steel Authority of India Limited and another)

18. *At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable.”*

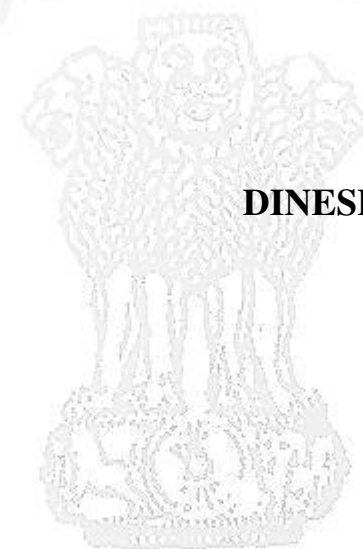


10. Thus a bare reading of the observations made in *M/s. Arcot Textile Mills Ltd. (supra)*, it is clear that the right to appeal can only be exercised in accordance with the law laid down by the Statute. Rules cannot supersede the law enacted by the Parliament. Rules have to play a secondary role to facilitate the implementation of the substantive law. I consider that the Tribunal has rightly rejected the petition on being not maintainable. Hence there is no substance in the present petition.

11. Accordingly, present petition along with pending applications stand dismissed.

DINESH KUMAR SHARMA, J

JULY 21, 2022
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