IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3141 OF 2022

B. E. Billimoria & Co. Ltd. ...Petitioner

Versus

Assistant Provident Funds Commissioner,
Employees Provident Funds Organization,
Regional Office, Mumbai – I, ...Respondent

Mr. A. P. Wachasundar, for the Petitioner.
Ms. Shehnaz Bharucha, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 24th APRIL, 2023

ORDER:-

1. This petition assails an order passed by the Central Government, Industrial Tribunal – II, Mumbai, ("CGIT-II, Mumbai") dated 30th May, 2019, declining to grant refund of an amount of Rs.37,27,707/- alongwith interest accrued thereon, deposited by the petitioner establishment pursuant to an order passed by this Court on 4th July, 2017 in Writ Petition (L) No.1746 of 2017.

2. Background facts can be stated as under:

(a) On 26th May, 2017, the Assistant Provident Fund Commissioner passed an order under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act, 1952") levying a penalty of Rs.74,55,414/- by way of damages for belated remittance made by the petitioner. The said order was assailed by the petitioner in Writ Petition (L) No.1746 of 2017. By an order dated 4th July, 2017, on the basis of the statement made on behalf of the petitioner that the petitioner was willing to deposit the interest to the tune of Rs.39,66,396/- in the office of Regional Provident Fund Commissioner and also deposit 50% of the damages in this Court, the respondents were directed not to take any further coercive action pursuant to the orders dated 26th May, 2017 and 30th May, 2017 passed by the Assistant Provident Fund Commissioner. Pursuant to the aforesaid order the petitioner deposited the aforesaid amount.

3. When the said writ petition was listed before the Court on 28th September, 2017, it was submitted on behalf of the petitioner that a forum to assail the aforesaid orders passed by the Assistant Provident Funds Commissioner was then available, and the petitioner had filed an application seeking wavier of pre-deposit under Section 14-B. Thereupon, the said petition came to be disposed with a direction to the Registrar to transmit the amount deposited by the petitioner in this Court, alongwith interest accrued thereon to the office of CGIT-II, Mumbai.

4. The petitioner preferred an application for waiver of deposit under the proviso to Section 7-O of the Act, 1952. The petitioner contended that pre-deposit under Section 7-O was not warranted in a proceeding assailing the levy of penalty under Section 14-B of the Act, 1952. By an order dated 21st December, 2017, the learned Presiding Officer, CGIT-II, Mumbai, was persuaded to dispose of the application holding that the petitioner was not required to deposit any further amount as the petitioner had deposited Rs.37,27,707/- being 50% of the damages levied.

5. Being aggrieved, the petitioner preferred Writ Petition No.2041 of 2018 and sought withdrawal of the said amount of Rs.37,27,707/- alongwith interest accrued thereon. By an order dated 4th September, 2018 the said petition came to be disposed granting liberty to the petitioner to file a fresh application before CGIT-II, Mumbai, seeking appropriate relief.

6. Availing the said liberty, the petitioner again filed an application seeking withdrawal of the aforesaid amount. By the impugned order, the learned Presiding Officer, CGIT-II, Mumbai, was again persuaded to reject the application holding that in the order dated 21st December, 2017 the Tribunal had clarified that the said deposit was considered as a condition for grant of waiver.

7. Being further aggrieved, the petitioner has again invoked the writ jurisdiction of this Court.

8. Mr. Wachasundar, the learned Counsel for the petitioner, strenuously submitted that the impugned order as well as the order passed by the learned Presiding Officer, CGIT-II, Mumbai, on 21st December, 2017 are singularly in teeth of the statutory provisions. Laying emphasis on the fact that the levy, in the case at hand, was towards damages under Section 14-B of the Act, 1952, Mr. Wachasundar submitted with a degree of vehemence that the provisions contained in Section 7-O were not at all attracted as the condition of pre-deposit operated only when the amount is determined by the authority under Section 7-A of the Act, 1952. Since there was no requirement of pre-deposit, the petitioner cannot be deprived of the amount which came to be deposited pursuant to the order of this Court. Mr. Wachawundar would urge that the fact that the learned Presiding Officer, CGIT-II, Mumbai, was fully alive to this legal position makes the orders even more vulnerable.

9. Evidently, the condition of pre-deposit operates where the amount has been determined under Section 7-A of the Act,

1952. Section 14-B empowers the Provident Fund Commissioner or the Authorized Officer to recover damages by way of penalty, not exceeding the amount of arrears, as may be specified in the scheme, where an employer makes a default in payment of the contribution. An employer assailing an order passed under Section 14-B is not obligated to make the pre-deposit before the challenge thereto is heard.

10. Mr. Wachasunder may be justified in canvassing a submission that the petitioner was not required to make the pre-deposit while assailing the order under Section 14-B. However, the circumstances in which the said deposit came to be made cannot be lost sight of.

11. The order passed by this Court on 4th July, 2017 explicitly records that the petitioner had volunteered to deposit 50% of the damages and upon such statement this Court had restrained the authorities from taking coercive action pursuant to the orders dated 26th May, 2017 and 30th May, 2017. Indisputably, the petitioner derived benefit of the said order. In this view of the matter, the abstract question as to whether pre-deposit was required to be made while assailing an order under Section 14-B of the Act, 1952 does not arise for consideration as the said order of deposit was not made as a condition to entertain the challenge to the order passed under Section 14-B. Viewed through this prism, the fact that by an order dated 21st December, 2017 the learned Presiding Officer, CGIT-II, Mumbai, had construed the said deposit as a condition for waiver pales in significance.

12. Moreover, the said deposit has been made pursuant to an order passed by this Court in the month of July 2017. At this length of time, it would be expedient that the appeal filed by the petitioner under Section 7-I assailing the levy of penalty under Section 14-B itself is finally heard and decided.

13. Hence, the petition stands disposed with a request to the Presiding Officer, Central Government, Industrial Tribunal-II, Mumbai, to decide the appeal preferred by the petitioner as expeditiously as possible and preferably within a period of six months from the date of the communication of this order.

[**N. J. JAMADAR, J.**]