IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17568-2023 (O&M)
Date of decision :05.09.2023

CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT FUND ORGANIZATION

…Petitioner

Versus

PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-I, SECTOR 18-A, MADHYA MARG, CHANDIGARH AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Chaudhary, Advocate for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner-Central Board of Trustees, Employees Provident Fund Organization (here-in-after referred to as `the petitioner-organization) has filed the instant writ petition under Article 226 of the Constitution of India, seeking quashing of impugned order dated 09.05.2023 (Annexure P-12) passed by the learned Central Government Industrial Tribunal-1, Chandigarh (here-in-after called as `the Tribunal').

2. Briefly, the petitioner-organization initiated enquiry under Sections 14-B and 7-Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short `the 1952 Act') against respondent No.2 (Eveline International, Ludhiana) on account of delay in remittance of EPF dues; wherein notice was issued to respondent No.2; upon which, respondent No.2 deposited the EPF dues of April, 2020 in the month of September, 2020. It is the case of the petitioner-organization that the Government of India through Ministry of Home Affairs issued various orders/notifications dated 24.03.2020, 01.05.2020 and 17.05.2020

(Annexures P-2 to P-4, respectively) owing to the nationwide lockdown on account of *Covid-19* pandemic. Considering the above-said orders/notifications, Head of the petitioner-organization also issued two circulars to extend relaxations to the establishments/factories covered under the 1952 Act from levy of penal damages for delay in deposit of dues during lockdown period. As per the circular issued by the petitioner-organization on 15.04.2020, the due date for payment of contribution for the month of March, 2020 was extended from 15.04.2020 upto 15.05.2020. The said circular reads as under :-

> *"To*
>
> *All Addl. CPFCs in charge of Zones*
> *All RPFCs in charge of Regional Offices*
> *All OICs in charge of District Offices.*
>
> *Subject: Extension of due date for payment of contributions and administrative charges/Inspection charges due for wage month March 2020 from 15.04.2020 to 15.05.2020 to establishments disbursing wages for March 2020.*
>
> *Sir,*
>
> *Considering the unprecedented situation created by COVID-19 and lockdown announced by the Central Government from 24.03.2020 midnight onwards to prevent the spread of Covid-19, the competent authority has decided to allow grace period of 30 days (from 16.04.2020 to 15.05.2020) for filing of Electronic Challan cum Return (ECR) to the employees of those establishments which have disbursed the wages for March, 2020 to their employees.*
>
> *It is clarified that employers, who seek to avail the above relief, need to file ECR for wage month March, 2020 on or before 15.05.2020, duly certifying the disbursement of wages to employees by declaring actual date of disbursement of wages for March, 2020 in the column "Salary disbursal date" in the ECR and remit the contributions and administrative/inspection charges on or before 15.05.2020.*
>
> *(This issues with the approval of the Central Provident Fund Commissioner)*
>
> *Yours faithfully*
> *(Pankaj Raman)*
> *Addl. CPFC (Compliance)"*

3. Further, vide circular dated 15.05.2020 issued by the petitioner-organization, a relief was provided to the establishments and

factories covered under the 1952 Act from levy of penal damages for delay in deposit of dues during lockdown, which reads as under :-

"To

All Addl. CPFCs in charge of Zones
All RPFCs in charge of Regional Offices
All OICs in charge of District Offices

Sub: Relief to establishments and factories covered under EPF and MP Act, 1952 from levy of penal damages for delay in deposit of dues during Lockdown to prevent COVID-19.

Sir,

In view of the prolong lockdown announced by the Government to control the spread of COVID-19 pandemic and other disruptions due to Pandemic situation, the establishments covered under EPF & MP Act, 1952 are distressed and not able to function normally.

*The Hon'ble Apex Court of India in **McLeod Russel India Limited Vs RPFC** (2014)15 SCC 263 has underlined the broad contours and essential elements of section 14B of the Act and held that mensrea, or culpable state of mind of the employer, is a sine-qua-non for inviting damages under section 14B. In other words, the provisions of section 14B would get attracted only when there is a positive evidence of mensrea on the part of the employer while committing default in timely remittances. This legal position has later been reaffirmed in **Assistant Provident Fund Commissioner vs. Management of RSL Textiles** (CA 96-97 of 2017).*

Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is evident that such delays are without mensrea of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Disasters Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will, therefore, attract the provisions of section 14B of the EPF Act.

Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.

(This issues with the approval of the Central P F Commissioner)

Yours faithfully,

(Jag Mohan)
Addl. CPFC (Hqrs.) Compliance & Legal"

4. Apparently, respondent No.2, herein submitted its reply to the

notice issued by the petitioner-organization, which reads as under :-

> *"Dear Sir,*
>
> *This is with reference to your above said Show Cause Notice for interest u/s 7Q and Damages u/s 14B for certain payments made after respective due dates, during the period from 01.04.2017 to 30.11.2017. Overdue payment in question is for the month of April 2020, for which due date was May 15th, 2020 but payment made on Sep.24, 2020. Our submissions for the same are here under :-*
>
> *Due to Covid-19, State Government had imposed lock down from March 23rd, 2020. Later on, company got permission to run the factory from April 14th for the manufacturing of PPEs. This way, due to lockdown factory remained closed for total 22 days (i.e. from 23.03.2020 to 13.04.2020). Company made full payment to its employees in March month, including non-working days (from 23.03.2020to 31.03.2020) in the month due to lock down.*
>
> *For April month, company made payment for all working days only and deposited due contribution for 04/2020 well within 15 days after making payment to the workers/employees.*
>
> *Later on, following the guidelines from honorable Supreme Court and understanding its social responsibilities during pandemic, on 12.09.2020, company and its employees reached to an agreement for 50% payment for lockdown period in factory.*
>
> *The factory was remained closed for 22 days (from 23.03.2020 to 13.04.2020) and according to agreement company has to pay for 11 days (50% of total period). Out of this for 9 days, payment had already been made. For balance 2 days, company immediate made payment on 22.09.2020 and deposited social security dues (ESI & PF) on 24.09.2020.*
>
> *Going through the above facts, your goodself can easily understand that this payment in question was not in normal circumstances rather for non-working days during lockdown period, which was not imposed by the company but due to pandemic. Payment for working days for April month had already been made on time and its PF contribution was also deposited before due date.*
>
> *Considering the facts, charges under sec. 7Q & 14B should not be levied on us. It is therefore requested to your goodself to waive these charges and oblige."*

5. The Regional Provident Fund Commissioner-1, Regional Office, Ludhiana, vide two separate orders dated 06.07.2021 i.e. Annexures P-8 and P-9 passed under Section 14-B of the 1952 Act and Section 7-Q of the 1952 Act, respectively assessed an amount of Rs.13,513/- towards damages under Section 14-B of the 1952 Act and also assessed an amount of Rs.18,454/- towards interest under Section 7-Q of the 1952 Act.

6. Feeling aggrieved against the afore-said orders, respondent No.2 herein preferred an appeal before the learned Tribunal below, which came to be decided vide its order dated 09.05.2023 (Annexure P-12) by holding as under :-

> *"10. The facts and circumstances of the present case are also identical to the case of **Gaurav Enterprises (supra)**. From the perusal of the notice, it is apparent that a common notice was given to the appellant under Section 14-b and 7-Q of the Act. The Hon'ble Madhya Pradesh High Court in the case of **M/s Sumedha Vehicles (supra)** has also held that merely because two orders have been issued with separate memo number cannot be infer that both are independent orders. Accordingly, on the basis of the analysis of the impugned order, it is apparent that common proceeding was drawn by the respondent and common notice was given. Though, separate order has been passed that order will be treated as a common order and in the light of the observation made by the Hon'ble Supreme Court and Hon'ble High Courts the appeal is maintainable.*
>
> *11. Now coming on to the next issue with regards to the imposition of damages under Section 14-B of the Act. The learned counsel for appellant has assailed the impugned order on several legal and factual grounds. From the perusal of contents, it is seen that the appellant-establishment has set up a case that the present case is not a case of intentional delay made by the appellant and delay was beyond the control of appellant-establishment. As it is mentioned that due to lock down in whole of the country, the factories were closed. The appellant has placed reliance upon the case of Hon'ble Supreme Court of India in the case of **Ficus Pax Private Ltd. & Ors. Vs. Union of India & Ors.,***

<u>Writ Petition (C) Diary No.10983 of 2020, decided on 12.06.2020</u>*. The Hon'ble Supreme Court of India has observed that no obligation on the employer to make payment of wages of their workers for the period their establishments are under closure during lock down.*

12. Since disaster happened in the form of COVID-19 Pandemic, admittedly the establishment was closed. It was the verdict of the Hon'ble Supreme Court of India that private establishments, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular state in which their establishment was close down due to lock down may initiate a process of negotiation with their employees organization and enter into a settlement with them and if they are unable to settlement by themselves submit a request to concerned labour authorities who are interested with obligation under different statute to conciliate dispute between the parties.

13. Now the question arises if the industries were closed and workers were not doing their work during that period there were exemption of payment of wages to the employees. In the present case, the appellant has submitted Annexure A-3 which shows that on 12.09.2022 the appellant-establishment and workers committee entered into a conciliation agreement that during the lock down period when the establishment was closed, a payment of 50% may be made to the workers on this point they entered into a compromise. A true copy of that agreement is attached as Annexure A-3. Annexure A-5 is a letter sent to Regional Provident Fund Commissioner, Ludhiana about description of deposition of the EPF dues from the impugned order. It is apparent that the respondent has admitted that there was a disaster due to the COVID-19 Pandemic Government of

India, Ministry of Home Affairs also passed the order to look into the matter of nationwide lock down to prevent COVID-19 Pandemic. EPFO Head Office had also issued a circular looking into the circular letter. One month period for deposition of contribution of EPF was extended. From the perusal of the impugned order, it does not show that any lenient view has been taken by the respondent that due to COVID-19 disaster the factories, establishments were closed in lock down and there was a mitigating circumstances in which the persons were avoiding to meet with other persons. Though the work begun after some time but the lock down was continued. Human being were saving their lives and avoiding the work. Nominal work was started. The full-fledged work production was hampered due to COVID-19 Pandemic disaster. The delay in deposition of the contribution was due to the mitigating circumstances and was not willfully made by the appellant. The respondent has not taken into consideration these circumstances and imposed a penalty/damages under Section 14-B upon the establishment. The facts remains that there was sufficient grounds available before the appellant in delay deposition of EPF dues. On the carefully and minute observation on above mentioned aspect, I am of the considered opinion that the plea taken by the appellant-counsel have solid grounds. This Tribunal is of the considered opinion that a complete waiver of damages should be made in depositing the dues were delayed and which are beyond the control of the appellant-establishment.

14. Further, it is evident from the order passed by the respondent-Commissioner that in a mechanical manner without discussing the pleas of the appellant-establishment which were sent to the respondent by way of Annexure 3 and 4 without considering any aspect of *the case, the order has been passed and the order of the respondent in regards to Section 14-B if liable to be set aside.*

15. So far as the matter is concerned that the order of Section 7-Q, the assessment of interest made under Section 7-Q of the Act by the respondent. It is admitted fact that there was a delay in depositing the EPF dues. It is clearly admitted that no case is made out for reduction in the interest under Section 7-Q of the Act. Further the interest component under Section 7-Q of the Act is always of the workers hence, no interference is being made to the order of imposition an interest under Section 7-Q of the Act and accordingly, the appellant-establishment is liable to deposit the interest amount under Section 7-Q of the Act.

ORDER:-

I. The appeal under order under Section 14-B of the Act is allowed in part and the amount of damages assessed under Section 14-B of the Act is abolished.

II. The appeal against the order under Section 7-Q of the Act is dismissed and the appellant-establishment is directed to deposit the interest amount of Rs.18,454/- within a period of two months from the date of receipt of the certified copy of the order.

III. Any amount which has been deposited or recovered from the appellant-establishment be adjusted in interest under Section 7-Q of the Act."

7. In the afore-mentioned circumstances, the petitioner-organization has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and facts in passing the impugned order dated 09.05.2023 (Annexure P-12) by submitting that the proceedings under Sections 14-B and 7-Q of the 1952 Act are independent proceedings and the Regional Provident Fund Commissioner-1, Regional Office, Ludhiana

had passed separate orders and respondent No.2 has challenged both the separate orders by way of filing an appeal before the learned Tribunal below, which was not maintainable. It is submitted that respondent No.2 had delayed the payment of EPF contributions deliberately and to justify the same, they had espoused a compromise between the workman and respondent No.2 to show that their outstanding salary was disbursed in the month of September, 2020. It is submitted that even if the outstanding salary of the workman was paid in the month of September 2020, even then the statutory liability to pay the EPF contribution within time was upon respondent No.2 as in the instant case, the EPF contribution for the salary to be paid to the workman for the month of April 2020, was to be paid upto 15.05.2020; whereas respondent No.2 had presented the challan only on 24.09.2020. It is, therefore, submitted that there was an apparent delay on the part of respondent No.2 in submitting the EPF contributions; accordingly, the Regional Provident Fund Commissioner-1, Regional Office, Ludhiana had rightly passed the orders levying damages as well as the interest on the delayed payment.

With the afore-said submissions, learned counsel for the petitioner has prayed for quashing of impugned order dated 09.05.2023 (Annexure P-12).

9. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

10. Apparently, the delay in submitting the EPF contributions by respondent No.2 as regards its workers for the month of April, 2020 was on account of the countrywide lockdown due to *COVID-19* pandemic. A perusal of the circulars issued by the petitioner-organization would clearly indicate that the emergent situation existing on account of *COVID-19*

pandemic was duly considered by the concerned authorities and the period for submitting EPF contributions was extended by granting grace period of 30 days. Apart from extending the period for submitting EPF contributions, the petitioner-organization had also exempted the imposition of damages on account of delay under Section 14-B of the 1952 Act.

11. In the instant case, it appears that EPF contributions for the month of April, 2020 were remitted by respondent No.2 as regards its workers in the month of September, 2020. The ground raised by respondent No.2 for delay in remitting the EPF contributions was that it had paid the salary to its workmen only in September, 2020 and accordingly, immediately thereafter they had also remitted their EPF contributions. The said fact is being sought to be disputed by the petitioner-organization by stating that respondent No.2 had intentionally not submitted the dues.

12. In my considered view, the situation existing on account of *COVID-19* pandemic, cannot be brushed aside and neither the stand of respondent No.2 that the EPF contribution was delayed on account of the fact that the salary itself was paid to its workman for the work done in April, 2020 in the month of September, 2020 on the basis of a compromise arrived at between the establishment and its workers.

13. The afore-said stand taken by respondent No.2 cannot be doubted on the mere assertion of the petitioner-organization that the delay was intentional moreso when it is not a hidden fact that during the relevant time, the entire country was under a lockdown on account of *COVID-19* pandemic which prevailed for a considerable long time and various establishments/businesses were permitted to resume their activities in a phased manner. Still further, a perusal of the order passed by the Tribunal would indicate that only the order levying damages under Section 14-B of

the 1952 Act, has been quashed by the Tribunal below and the order imposing interest for delay in making the payment has been retained. In my considered view, no fault can be found with the afore-said order passed by the Tribunal below, especially in view of circular dated 15.04.2020, wherein it has been stated that the delay in deposit of contributions during the period of lockdown announced in terms of the Disaster Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of Section 14-B of the 1952 Act.

14. Apart from bald assertions of the petitioner-organization, there is no material on record to *prima facie* indicate that the delay in deposit of contributions by respondent No.2, herein was on account of any culpable state of mind of the employer/respondent No.2; especially taking into consideration the then prevailing situation of *COVID-19* pandemic.

15. In view of the above, I do not find any illegality or perversity in the impugned order dated 09.05.2023 (Annexure P-12) therefore, the instant writ petition fails and the same is, accordingly, dismissed.

16. All pending application/s, if any, shall also stand closed.

September 05, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

GURPREET KAUR
2024.02.06 19:34
I attest to the accuracy and
authenticity of this order/judgment