24. 25.11.2024
Court No.13.

(Pritam)

MAT 2119 of 2023
With
CAN 1 of 2024
With
CAN 2 of 2024

Central Board of Trustees, Employees' Provident Fund Organization.
-Vs.-
Union of India & Ors.

Ms. Aparna Banerjee
.....for the appellant.

Mr. Ravi Kumar Dubey
.....for the respondent no.3.

In Re :- CAN 2 of 2024

1. This is an application for condonation of delay of 73 days in filing this Memo of Appeal.
2. Cause shown by learned Counsel for the appellant for the said delay is sufficient. The delay is condoned.
3. Thus, CAN 2 of 2024 is allowed and disposed of.

In Re :- MAT 2119 of 2023 & CAN 1 of 2024.

4. The instant appeal arose out of an order dated 06th July, 2023 passed by a single Bench of this Court in WPA 8280 of 2023. By the impugned order, the learned

Single Bench has upheld the order of the CGIT, Calcutta in Appeal No. EPF 3 of 2021 dated 11th January, 2023.

5. By the said Award, passed on the application filed by the respondent no.3, the establishment, the Tribunal has, in exercise of its discretion, waived damages payable by the establishment for the period from the year 1st July, 2005 to February 2010 under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

6. Aggrieved by the said award, the EPF authorities had challenged the same before the single Bench. The single bench has not interfered with the award.

7. The brief facts relevant to the case are that the establishment was running since the year 2005 with more than 20 employees (actually 23). In terms of Section 1(3A) of the Act of 1952, the respondent no.3 was automatically covered under the said Act and was required to make a deposit of employer and employee contribution to the provident fund with the EPF authorities.

8. The establishment did not do so. Sometime in the year 2010, the EPF authorities conducted an inspection of the establishment and found that they were liable under the EPF Act, 1952 and yet did not make any deposit or declaration.

9. By a summons dated 4th September, 2019, the EPF authorities, under Section 14B of the Act of 1952, directed the establishment to pay a total sum of Rs.6,41,199/- towards damages and interest under Section 14B and under Section 7Q respectively of the said Act of 1952.

10. A show-cause notice was issued by the said notice.

11. In reply thereto, the establishment made full payment of damages and interest, including the PF contributions of the employees from July 2005 till April 2019. The payment was made belatedly.

12. Pursuant thereto by an order dated 23rd March, 2021, damages were formally levied on the establishment, of a sum of Rs.4,16,227/- under Section 14B of the Act and a sum of Rs.2,24,972/- under Section 7Q towards interest.

13. The Tribunal, however, in its wisdom exercised discretion and waived damages for the establishment for the period from July 2005 till February 2010. The demand of the EPF authorities for interest was, however, upheld.

14. Learned Counsel for the parties for the first time before the single Bench produced a Circular issued by the EPF authorities dated 15th June, 2004 whereof damages were exempted under Section 14B for a pre-discovery period. The object and purpose behind the

Circular, appears to be, to enable small and individual establishments, from the financial liability and to promote such businesses for a period of time.

15. The said exemption was, however, withdrawn by a further Circular dated 13th February, 2009 wherein it was stipulated that in all future cases levy of damages should be proceeded as per the provisions contained under Section 14B read with Para 32A of the EPF Act, 1952.

16. What strikes this Court rather is whether by a Circular or notification issued by the Director of Recovery, a statutory provision under Section 14B, could at all be altered.

17. *Prima facie,* it appears to this Court that the power to make rules or waive penalties and damages must be conferred under the statute itself. In the absence whereof any waiver of any statutory provisions, is impermissible in law.

18. Be that as it may. In the case of the instant establishment, the inspection and determination of the violation of the Act by the establishment was made in the year 2010, i.e., after the Circular dated 13th February, 2009. The question of any benefit to the establishment of the Circular dated 15th June, 2004, assuming the same is lawful, therefore, cannot arise. The Tribunal does not have the power to exercise any

discretion to waive or reduce or increase any statutory levies.

19. It is only the Central Government, in exercise of powers under the 1952 Act, that can permit an authority or Tribunal to waive or exercise any discretion for such waiver. In the absence of any such statutory provision, the Tribunal has wholly erred in waving damages for the period from July 2005 till February 2010. The learned Single Judge, in our view, has omitted to notice the aforesaid *lacuna* in the Award in question.

20. For the reasons stated hereinabove, the impugned Award to the extent that it waives the statutory damages on the establishment by the EPF authorities, is set aside. The impugned order of the learned Single Bench is to the aforesaid extent, set aside.

21. The establishment shall be liable for damages under Section 14B which it has already paid, according to its own calculations. The EPF authorities shall, assess the same and the establishment shall be liable for any sums calculated, after giving due credit to what the establishment has already paid. The calculation shall be communicated to the establishment and it shall be liable to pay the same within a period of 2 (two) weeks thereafter. In default, the quantum of damages demanded by the EPF authorities will carry further interest at the rate of 10% per annum to the aforesaid.

22. The appeal is, therefore, allowed and disposed of.

23. In view of the above, the connected application being CAN 1 of 2024 also stands disposed of.

24. There will be no order as to costs.

25. Urgent Photostat certified copy of this order may be supplied to the parties upon all formalities, if applied for.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)