



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

203

CWP-23456-2022

Date of Decision : 11.12.2024

CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT
FUND ORGANISATION

.... PETITIONER

V/S

M/S GNG LIMITED AND ANR.

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Rajesh Hooda, Advocate
for the petitioner.

Mr. Karajveer Singh, Advocate
for respondent. No.1.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 23.05.2022 (Annexure P-5) whereby Central Government Industrial Tribunal cum Labour Court-II, Delhi has reduced damages to 50%.

2. The petitioner is an authority constituted under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short '1952 Act'). The respondent No.1 is a public limited company. The respondent delayed provident fund contribution for the period from September' 2004 to August' 2017. The assessing authority in terms of Section 7Q and 14B



of 1952 Act initiated proceedings which culminated in imposition of statutory interest as well as damages. The rate of interest as well as upper limit of damages has been notified under para 32-A of EPF Scheme, 1952. The assessing authority taking lenient view imposed damages ranging from 01% to 31% whereas upper prescribed limit was 10% to 37%. The quantum of damages depends upon period of delay. The assessing authority for different periods assessed damages to the tune of Rs.5,76,818/-.

3. The respondent feeling aggrieved from assessment order preferred an appeal before Appellate Tribunal which by impugned order reduced damages to 50%. The Tribunal reduced the quantum of damages on the ground that there was no *mens rea* and higher amount of damages has been imposed.

4. Mr. Hooda submits that respondent wrongly pleaded before Tribunal that assessing authority has charged damages @ 22% instead of 10% and 17% instead of 5% of delayed payment. The assessing authority instead of charging damages @ 10% had actually assessed @ 1-2%. There are stray cases where damages were charged @ 31% as there was delay beyond 06 months.

5. Calculation sheet filed by Mr. Hooda is taken on record as Annexure A.

6. On being confronted with calculation sheet which Mr. Hooda produced during the course of hearing, Mr. Karajveer Singh, Advocate expressed his inability to controvert the fact that assessing authority has not assessed damages @ 22% where outer limit was 10% or



@ 17% where upper limit was 5%. He submits that Appellate Authority was quite competent to reduce the quantum of damages.

7. I have heard the arguments of counsel for the parties and perused the record.

8. From the perusal of record especially the calculation sheet submitted by petitioner during the course of hearing, it is quite evident that assessing authority had assessed damages @ 1% to 31% depending upon period of delay. In a case where damages could be assessed @ 10%, the assessing authority had assessed @ 1-2%. Similarly, where damages could be assessed @ 17%, had assessed @ less than 5%.

9. In such circumstances, it appears that Appellate Tribunal did not appreciate actual facts and figures and was swayed by submissions of the respondent-establishment. The assessing authority had taken a lenient view and assessed damages at much lower rate than maximum prescribed. In any case, the total amount of damages was Rs.5,76,818/- which considering the fact that there was long delay on the part of respondent and period involved was from 2004 to 2017 cannot be called exorbitant.

10. In the wake of above discussion and findings, the instant petition deserves to be allowed and accordingly allowed. The impugned order dated 23.05.2022 is hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

11.12.2024
anju

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