(2015) 08 JH CK 0059

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5992 of 2013

A.K. Dutta and Co. Pvt. Ltd. APPELLANT

Vs

Employees Provident Fund Organization and Others RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Employees Provident Funds Family Pension Fund and Deposit-linked Insurance Fund Act, 1952 — Section 14B, 6, 7Q

Citation : (2015) 08 JH CK 0059

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ashok Kumar Jha, for the Appellant; R. Raj and B. Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 13.05.2013 of the Regional Provident Fund Commissioner, the present writ petition has been filed.

2. The brief facts of the case are that, a notice under Section 14B and 7Q of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 was issued on 11.12.2012 to the petitioner-company for default in payment of Employees'' Provident Fund, Employees'' Pension Contribution, Insurance Fund Contribution etc. for the period between July, 2009 to March, 2012. The petitioner submitted its reply on 02.01.2013 explaining the reasons for delay. By letter dated 05.01.2013, the petitioner asserted that on the date of show-cause notice dated 11.12.2012, no dues against the petitioner was pending and therefore, provision under Section 14B was not applicable. The petitioner in the meantime, deposited Rs. 5,23,284/- as interest through e-challan dated 17.01.2013. The Regional Provident Fund Commissioner, Jamshedpur however, passed order dated 13.05.2013 directing the petitioner to pay Rs. 5,23,284/- under Section 7Q and Rs. 9,79,669/- under Section 14B of the Act.

3. The learned counsel for the petitioner submits that though on the date when

show-cause notice was issued to the petitioner, no outstanding dues was pending and therefore, provision under Section 14B of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 is not attracted. The petitioner has already paid interest @ simple interest and therefore, on that count also, impugned order dated 13.05.2013 is liable to be quashed. The learned counsel for the petitioner has relied on decision in " Hi-Tech Vocational Training Centre Vs. Assistant Provident Fund Commissioner, (2011) 177 DLT 415 : (2011) 129 FLR 274 : (2011) 3 LLJ 554 : (2011) LLR 231 and " Terrace Estate, Unit of United Plantation Ltd. Vs. The Assistant Provident Fund Commissioner, (2010) 125 FLR 367 : (2010) 1 LLJ 381 : (2009) WritLR 1062 .

4. Per-contra, the learned counsel for the respondents relying on the stand taken in the counter-affidavit submits that in terms of Section 6 of the Employees'' Provident Fund and Miscellaneous Provision Act, 1952, every employer is required to pay contribution and other allied charges within 15 days of the close of every month. The financial difficulty for making delayed payment is not a ground recognised under the Act. The learned counsel further submits that the petitioner itself has admitted delayed payment and thus, on its own admission provision under Section 7Q and 14B would be applicable.

5. I have carefully considered the rival contentions on behalf of the parties and perused the documents on record.

6. From the materials on record, it appears that a show-cause notice was issued to the petitioner for default in making payment on various count between the period July, 2009 and March, 2012. The notice dated 11.02.2012 has been issued under Section 14B and 7Q of the Act. The petitioner submitted representation and the proceeding continued on different dates. During the proceeding before the Regional Provident Fund Commissioner, the petitioner submitted further representations dated 05.01.2013, 17.01.2013 and 11.02.2013. The Regional Provident Fund Commissioner has noticed that the employer did not dispute either the quantum or the extent of delay in remittance of P.F. Contribution and allied dues. In the writ petition also, the petitioner has admitted delay in depositing contribution as required under the Act. In paragraph No. 8 of the writ petition, the petitioner has averred as under:

8. "That pursuant to the aforesaid notice dated 11.12.2012 the petitioner vide his letter dated 02.01.2013 submitted its reply mentioning therein the reasons for delay in depositing the contributions as required under the Employees'' Provident Fund and Misc. Provision Act, 1952. Besides mentioning financial difficulties it was also informed that at no point of time they had the intention of evading the contribution etc. Moreover while calculating the interest and the No. of days taken into consideration for calculating the damages may kindly be also decreased and therefore requested to sympathetically consider their case and demand only the interest portion and forgo the penalty/damages."

7. The Regional Provident Fund Commissioner taking note of the mandatory

provisions under the Act held that the operational or commercial difficulties is not the reasonable excuse for avoiding timely remittance of statutory dues. In so far as, contention that the provision under Section 14B is not applicable, Regional Provident Fund Commissioner has recorded that levy of damage under Section 14B has been based on rate linked with the period of delay in remittance of regular dues and the term arrear in Section 14B refers to arrear pertaining to a specific period. It is noticed that the petitioner-company earlier also, defaulted remittance of PF Contribution and other allied dues which however, it deposited subsequently on 06.09.2009. In " M/s. Hindustan Times Limited Vs. Union of India and Others, (1998) 1 JT 18(1) : (1998) 1 SCALE 34 : (1998) 2 SCC 242 : (1998) 1 SCR 4 : (1998) 1 UJ 368 : (1998) AIRSCW 352 : (1998) 1 Supreme 174 , it has been held by the Hon''ble Supreme Court;

28. "We have already stated that in Organo the Regional Provident Fund Commissioner held that power-cut, financial problems, disputes between partners were not relevant explanations and that the said view was not interfered with by this Court."

8. Considering the above facts, I find no substance in the contention raised on behalf of the petitioner and accordingly, the writ petition is dismissed on merits however, it appears that during the proceeding before the Regional Provident Fund Commissioner, the petitioner deposited Rs. 5,23,284/- and informed the Regional Provident Fund Commissioner vide letter dated 17.01.2013. The payment made by the petitioner is not reflected in impugned order dated 13.05.2013 and therefore, a liberty is reserved with the petitioner to seek necessary adjustment, if applicable.