(2004) 06 KL CK 0073

In the High Court Of Kerala

Case No : W.A. No. 187 of 2004

Annie Thomas APPELLANT

Vs

The Assistant Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B, 7A, 7B, 8B, 8C
Kerala High Court Act, 1958 — Section 5

Citation : (2004) 06 KL CK 0073

Hon'ble Judges : Nauvdip Kumar Sodhi, C.J;P.R. Raman, J

Bench : Division Bench

Advocate : Alex Varghese, for the Appellant; N.N. Sugunapalan, and B. Krishnamani, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, C.J.—The Appellant before us was running a cashew factory under the name and style of "Seema Cashew Traders". Owing to some financial difficulties, the factory was closed in the year 1995 and thereafter, the factory was leased out to Respondents 3 and 4. The lease deed was executed between the parties on 22nd April 2000. Thereafter, Respondents 3 and 4 started running the factory and they too closed down the business after some time. It is not in dispute that there is no liability in regard to the contributions payable under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act'') till the date of transfer. The Department held an enquiry u/s 7A of the Act and determined a sum of Rs. 4,37,856 as payable by the employer towards the contributions under the Act and various schemes framed thereunder for the period from July 2000 to February 2001. Admittedly, during this period, Respondents 3 and 4 were running the factory. By order dated 11th December 2001, the Assistant Provident Fund Commissioner has determined the aforesaid amount and has called upon Respondents 3 and 4 and the employer to remit the amount of Rs. 4,37,856 within 15 days of the order failing which the amount would be recovered as arrears in the manner specified under Sections 8B to 8C of the Act. In pursuance to this order, recovery is sought to be made from the Appellant. It was then that she filed O.P. No. 32507 of 2002 in this Court claiming that she was not liable to pay the amount as the factory stood transferred to Respondents 3 and 4 and that it was their liability to pay the amount The matter was considered by the learned Single Judge who came to the conclusion that there were some disputed facts involved in this case as a result of which he relegated the Appellant to the remedy u/s 7B of the Act. Feeling aggrieved by the order of the learned Single Judge, the Appellant has filed the present Writ Appeal u/s 5 of the Kerala High Court Act.

2. We have heard the Learned Counsel for the parties and are of the view that the Writ Appeal deserves to succeed. At the outset, we may mention that there is no dispute on facts. The Appellant was the employer qua the employees till 22nd April 2000 on which date the factory was leased out to Respondents 3 and 4. In terms of Section 17B of the Act, the liability in regard to the contributions payable in respect of the period after the date of transfer is that of the transferee. Section 17B provides that where an employer in relation to an establishment, transfers that establishment in whole or in part by lease or otherwise, the employer and the person to whom the establishment is so transferred are jointly and severally liable to pay the contribution and other sums due from the employer under the Act or the scheme framed thereunder in respect of the period up to the date of such transfer. It necessarily follows that for the period after the date of transfer, it is the transferee alone who has to bear the burden of paying the contributions. In the case before us, the period in dispute is after the date of transfer. In this view of the matter, we have no hesitation in holding that it was Respondents 3 and 4 alone who were liable to pay the amount determined by the Commissioner u/s 7A of the Act and not the Appellant.

3. In the result, the appeal succeeds and the same is allowed. The order of the learned Single Judge is set aside and the notices of recovery (Exts. P-6 and P-8) issued to the Appellant are quashed making it clear that it will be open to the Department to recover the amount from Respondents 3 and 4 subject to any challenge in regard to the quantum of the amount determined u/s 7A. No costs.