(2011) 09 BOM CK 0137

In the Bombay High Court

Case No : Writ Petition No. 2146 of 2011

Asahai Infrastructure and Projects Ltd. APPELLANT

Vs

Asstt. Provident Funds Commissioner RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(4), 14B, 7(1), 7A

Citation : (2011) 131 FLR 1091 : (2012) 2 LLJ 565 : (2011) LLR 1148

Hon'ble Judges : V.A. Naik, J

Bench : Single Bench

Advocate : Anjali Joshi, for the Appellant; Anoopsingh Parihar, for the Respondent

Final Decision : Allowed

Judgement

Mrs. Vasanti A. Naik, J.—Rule is made returnable forthwith. The petition is heard finally at the stage of admission as a notice of final disposal was issued by an order dated 2nd of May, 2011 and the respondent is duly served.

The petitioner impugns the order passed by the Employees Provident Fund Appellate Tribunal on 4.3.2011 dismissing an appeal filed by the petitioner u/s 7(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 on the ground that an appeal u/s 7(1) could be filed only against an order passed under sections 7-A, 7-B, 7-C or 14-B of the Act of 1952. The impugned order dated 4.3.2011 appears to be erroneous as the Employees Provident Fund Appellate Tribunal did not minutely consider the provisions of section 7(1) of the Act of 1952 before dismissing the appeal filed by the petitioner, as not maintainable. On a reading of section 7(1) of the Act of 1952, it is clear that a person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any authority under the Proviso to sub-section (3) or sub-section 4 of section 1 may prefer an appeal to the Tribunal against the same. Though the provisions of section 7(1) of the Act of 1952 provide an appeal against an order under sections 7-A, 7-B, 7-C and 14-B, they also provide an appeal against the order passed under the Proviso to sub-section 3 of section 1 of the Act. Merely because the petitioner had applied for the coverage under the Act, it cannot be said that the petitioner is precluded from challenging the order passed under the proviso to sub-section 3 of the section 1 of the Act In any case, this aspect was not considered by the Employees'' Provident Fund Appellate Tribunal and the Tribunal dismissed the appeal on an erroneous assumption that an appeal could be preferred only against an order under sections 7-A, 7-B and 7-C or 14-B of the Act. In the instant case, it prima facie appears that the petitioner was intending to challenge the order passed under proviso to sub-section 3 of section 1 of the Act by filing an appeal u/s 7-1 and, hence, it was necessary for the Employees'' Provident Fund Appellate Tribunal to have considered this aspect of the matter.

2. Hence, in the result, the writ petition is allowed. The impugned order passed by the Employees Provident Fund Appellate Tribunal on 4.3.2011 is quashed and set aside. The Tribunal should proceed with the appeal filed by the petitioner u/s 7(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in accordance with law.

Rule is made absolute in the aforesaid terms with no order as to costs.

