(2017) 09 DEL CK 0347

In the Delhi High Court

Case No : Civil Writ Petition No. 8053 Of 2017

Assistant Provident Fund Commissioner APPELLANT

Vs

M/S Kangan Security Service RESPONDENT

Date of Decision : 18-09-2017

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Employees Provident Fund And Miscellaneous Provisions Act, 1952 — Section 7A, 7O, 7Q, 14B

Citation : (2017) 09 DEL CK 0347

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Prem Prakash

Final Decision : Dismissed

Judgement

Nature of damages

Account No.",,Amount,,

P.F. contributions,"Rs.3,71,230/-",1,,

Administrative charges,"Rs.43,999/-",2,,

FPF/EPS contributions,"Rs.3,42,384/-",10,,

EDLI contributions,"Rs.22,362/-",21,,

EDLI administrative charges,Rs. 433/-,22,,

TotalÂ Â Â Â Â Â Â Â Â Â Â,"Rs.7,80,408/-",,,

the establishment.,,,,

4. On behalf of the APFC (N) it had been contended before the EPFAT that the â?? Actâ? was meant to provide social and financial security to the,,,,

downtrodden section of society at the time of retirement, death during service and during his medical treatment and that it is a social welfare legislation",,,,

which cannot be done away with and that strict adherence to its provisions is mandatory. It was further contended before the EPFAT that the,,,,

employer was bound to make the provident fund contribution in time and in case of any default the employers were liable to pay damages for the,,,,

purpose of indemnifying the beneficiaries for the loss that they had suffered and that as per the record of the APFC the establishment had been,,,,

defaulting in terms of the delayed remittance. Reliance had also been placed before the APFC (N) on the verdict of the Supreme Court in Organo,,,,

Chemical Industries and Anr. Vs. Union of India and Others 1979 (002) LLJ 0416 to the effect that habitual defaulters like the establishment (i.e. the,,,,

respondent to the present petition) could not be allowed to claim any benefit of leniency and it was further contended on behalf of the APFC that the,,,,

appeal before the EPFAT was liable to be dismissed.,,,,

5. The learned EPFAT vide the impugned order in appeal No. ATA 94(4)2011 had observed as under:-,,,,

â??6. In case law titled as Roma Henny Security Services Pvt. Ltd. vs. Central Board of Trustees, EPF Organization through Assistant PF",,,,

Commissioner, Delhi (North) (supra), it is held by Honâ??ble High Court of Delhi that up to 26.09.2008 the earlier table continue to",,,,

govern the assessment, which included the element of interest under section 7Q of the Act shall prevail and from 26.09.2008 onwards the",,,,

damages and interest are segregated. In case in hand, entire period of assessment is before 26.09.2008, so respondent was supposed to",,,,

assess the dues on the basis of earlier table, which included element of interest under Section 7Q of this Act.",,,,

7. Admittedly respondent passed impugned order not on the basis of earlier table continue to govern the assessment. Respondent calculate,,,,

the dues applying maximum rates of 17%, 22%, 27% and 37%. Further respondent already assessed separately interest under section 7Q of",,,,

the Act so respondent was duty bound to apply rates applicable 5%, 10%, 15% and 25%. As respondent not carried out the obligation",,,,

within the declared line so impugned order of respondent is to go. It is noted that respondent not dealt with the mitigating circumstances as,,,,

alleged by the appellant.,,,,

8. Keeping in view all the circumstances of the case, this Tribunal reached at a firm opinion that the interest of justice would be met by",,,,

imposing of 60% of the assessed damages on the appellant establishment along with the entire assessed interest. In terms of the above, the",,,,

present appeal is allowed and impugned order is hereby set aside. Any amount deposited by appellant against impugned order shall be,,,,

adjusted. Copy of the order be sent to the parties as per law.â??,,,,

6. The submission made through the present petition is to the effect that the EPFAT had grossly erred in reducing the amount of damages to 60% of,,,,

the assessed damages imposed on the respondent. Reliance was placed on behalf the petitioner on the verdict of the Supreme Court in RPFC vs.,,,,

Shibu Metal Works, 1964-65 (27) FJR 491 to contend that in construing the material provisions of the Act, if two views were reasonably possible , the",,,,

Courts Â should prefer the view which helps the achievement and furtherance of the object and to similar effect reliance was placed on behalf of the,,,,

petitioner on the verdict of the High Court of Bombay in State vs. Girdhari lal Bajaj, 1962 II LLJ (Bom. DB), to contend that when there was a doubt",,,,

in any meaning of words they ought to be understood in a manner in which it best harmonizes the subject of the enactment and the object which the,,,,

legislature had in view. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in Chairman, SEBI vs. Shriram",,,,

Mutual Fund & Anr. on order dated 23.08.2006 passed in CA Nos. 9523-24/2003 to contend that unless the language of the statute indicated the need,,,,

to establish the presence of mens rea, it was wholly unnecessary to ascertain whether such a violation was intentional or not. It was thus submitted on",,,,

behalf of the petitioner that once the delay in the remittance of dues under the EPF & MP Act and its Scheme stood established, enquiry under",,,,

Section 14-B and 7Q had essentially to follow, and mens rea was not a pre condition for imposition of penalty for contravention of the provisions of a",,,,

civil nature. Reliance in relation thereto was placed on behalf of the petitioner on the verdict of the High Court of Bombay in SEBI vs. Cabot,,,,

International Capita Corporation (2005) 123 Comp. Cases 841 (Bom.) to similar effect. Inter alia, it was submitted on behalf of the petitioner that a",,,,

defaulter must be prevented from retaining the known profits of its crime and the principle of Jurisprudence-Commodum Ex Injuria Sua Non Habere,,,, Debet ought to have been implemented so that no person can take advantage of his own wrong and no one derives advantage from oneâ??s own,,,,

injurious behavior and no one ought to benefit from oneâ??s own tort. Inter alia, it was submitted through the petition that the EPFAT had also failed",,,,

to appreciate that in terms of Section 7O of the EPF and MP Act, no appeal of the employer could be entertained by the Tribunal unless the employer",,,,

establishment had deposited with it 75% of the amount due from it as determined under Section 7A of the Act and reliance was placed on behalf of,,,,

the petitioner on the verdict of the High Court of Kerala in Muthoot Pappachan C.& M Services V. EPFO 2009 LLR 298 (KER HC) to the effect,,,,

that deposit of 75% of the amount due was a pre condition under the EPF and MP Act, 1952 for an appeal to be maintained which Â in the instant",,,,

case had not been complied with by the establishment. Inter alia, it was stated vide grounds D and E of the petition to the effect:",,,,

â??D.Because the Honble EPFAT miserably failed to explain the cogent reason and basis of calculation for imposing 60% of the assessed,,,,

damages.,,,,

E. Because the order passed by the Assessing Officer dated 07.12.2010 is after proper application of mind and in consonance with the,,,,

provisions of the Act. It is stated that the basis of calculation and cogent reasons for imposing the damages have been provided in 14B,,,,

order. The said order of the Assessing Officer was based on a report made by the Enforcement Officer.â??,,,,

and further it was, inter alia, stated through the petition that damages levied as per the order of Assessing Officer under Section 14B had been levied",,,,

upon the establishment in consonance with the Act and that the EPFAT had failed to appreciate the evidence placed on record by the APFC (N). The,,,,

petitioner thus contended that the following questions of law to the effect:,,,,

â??1. Whether the Hon ble EPFAT was correct in imposing just 60% of the assessed damages on the Respondents herein vide its order,,,,

dated 04.11.2016 and thereby contravening the provisions of the Employee Provident Fund Act.,,,,

2. Whether the Hon ble EPFAT was correct in contravening the provisions of the EPF Act, which provides for levying of damages and",,,,

interest thereon,â??",,,,

arose for determination.,,,,

7. Initial submissions were made on behalf of the petitioner by the learned counsel for the petitioner reiterating the submissions that have been made in,,,,

the petition.,,,,

8. At the outset it is essential to observe that the delay in submission of the,,,,

Period of Delay,"Revised

rates of

damages","Interest chargeable

under Section 7Q",Total,"Existing

rate of

damages

(i) 2 months or less,5,12,17,25

(ii)Â OverÂ 2Â

months

but Less than 4

months",10,12,22,25

(iii)Â overÂ 4Â

months

butÂ Â Â Â

lessÂ Â Â Â

thanÂ Â Â Â 6

months",15,12,27,25

(iv) Over 6 months,25,12,37,25

the establishment along with the entire assessed amount observing to the effect that the APFC(N) had applied the maximum rates of damages.,,,,

In the circumstances, thus it is held that there is no infirmity in the impugned order dated 04.11.2016 of the EPFAT in ATA No. 94(4)2011 in imposing",,,,

60% of the assessed damages on the employer establishment i.e. respondent herein along with the entire assessed interest.,,,,

9. Another contention was raised on behalf of the petitioner that the mandatory provision of Section 7(O) of the EPF and MP Act, 1952 which",,,,

provides to the effect:,,,,

â??7-O. Deposit of amount due, on filing appeal.â?"No appeal by the employer shall be entertained by a Tribunal unless he has deposited",,,,

with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A:,,,,

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.â??",,,,

had not been complied with and that the EPFAT apart from having directedÂ the employer establishment to deposit the 60%Â of the amount due as,,,,

determined under Section 7A of the EPF and MP Act, 1952, vide order dated 07.12.2010 of the APFC(N) had also not recorded any reasons in",,,,

writing as to why the requisite pre-deposit of 75% amount (to be deposited) due from the employer establishment had been waived and thereafter,,,,

reduced.,,,,

Undoubtedly, the EPFAT vide its impugned order dated 04.11.2016 makes no mention of having permitted waiver or reduction of 75% of the pre-",,,,

deposit in terms of Section 7O of the EPF and MP Act, 1952 qua the assessed amount in terms of Section 7A of the Act. However, taking into",,,,

account the factum that the order dated 07.12.2010 of the APFC (N) Ref.No.E/DL/8873/Damage/C-I was apparently erroneous in relation to the,,,,

aspect of inclusion of interest amount coupled with the assessment having been made on the basis of the table under para 32A of the EPF Scheme,,,,

1952 which was under implementation w.e.f. 26.09.2008 though the period of which the assessment was made was prior to the said date, i.e. from",,,,

September 2004 to January 2008, the waiver of the pre-deposit in terms of Section 7O in the specific facts and circumstances of the instant case does",,,,

not suffice to dislodge the order dated 04.11.2016 of the EPFAT in appeal in ATA No. 94(4)2011.,,,,

The authorities under the EPF and MP Act, 1952 shall however take into account that in the event of there being circumstances spelling out",,,,

exercise of discretion of reduction or waiver of the 75% of the pre-deposit amount for hearing an appeal under Section 7O of the EPF and,,,,

MP Act, 1952, it would be appropriate and essential for the said authorities to expressly observe the reasons therefor.",,,,

10. With these observations, it is not considered appropriate to issue any notice

of the petition, which is thus hereby dismissed.",,,,

