(2014) 12 DEL CK 0311

In the Delhi High Court

Case No : Writ Petition (Civil) 8736/2014

Ayureved Rugnalaya APPELLANT

Vs

Assistant Provident Fund Commissioner RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0311

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.K. Gupta, Advocate for the Appellant; Abhinav Ashok and Arvind Verma, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner seeks modification of the order dated 15.09.2014 passed by the learned Tribunal. He further seeks directions thereby directing the Tribunal to hear the appeal on merits without insisting the pre-deposit.

2. The petitioner has been asked to pay damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for the period March, 2002 to February, 2009.

3. Being aggrieved, the petitioner filed an appeal bearing No.ATA 877(09) 2014 wherein vide order dated 15.09.2014 the learned Tribunal directed the petitioner to deposit Rs.10 lacs as pre-deposit and the appeal is listed for hearing on 11.02.2015.

4. Learned counsel appearing on behalf of the petitioner submits that pre-deposit is not required to be deposit in view of the decision taken by this Court in various judgments.

5. Learned counsel has relied upon the case of Old Village Industries Ltd. Vs. The Asstt. Provident Fund Commissioner Employees Provident Fund Organisation and

Another, whereby this Court held as under:

"The power to waive or reduce the amount to be deposited is relatively to the amount determined by the Officer under section 7A of the Act. In order words, the pre-requisite of deposit of 75% of the demanded amount applicable to an order passed under section 7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of section 7(1) to the order passed under section 7A. Such provisions are to be construed strictly and cannot be given a wider meaning so as to create a liability which is intended to be correct to the entertainment of an appeal. The liability to deposit arises in the situation strictly contemplated under the provisions of this section. There is nothing in the section so as to extend its application to an order passed under section 14B of the Act. An employer has a right to prefer an appeal against an order under section 14B, under section 7(1) of the Act but the pre-condition of deposit for entertainment of such an appeal is not covered under section 7- (O) of the Act. Thus, I have no hesitation in rejecting the contention of the respondents that it would be mandatory for the employer to deposit 75% of such amount before appeal can be entertained or even that there cannot be stay of recovery of the said amount by the Appellate Authority. The argument raised on behalf of the respondents would be untenable even for another reason that damage is the consequence of the demand raised under section 7A of the Act. The provisions of section 14B of the Act attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in a category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Such provisions being related to revenue would be construed strictly whether to the advantage or disadvantage of the person upon whom the liability is sought to be fastened. Once the provisions of section 7-O does not include an appeal against an order under section 14B then it would be in no way permissible to include such an order by implication or otherwise."

6. Learned counsel for the petitioner further submits that similar view has been taken by this Court in W.P.(C) Nos. 1148/2010 and 3176/2013 decided on 24.02.2010 and 15.05.2013 respectively.

7. Learned counsel for the respondent appearing on advance notice does not dispute the law settled by this Court in case of M/s. Old Village Industries ltd. (supra).

8. In view of the above the order dated 15.09.2014 is modified to the extent that the Tribunal shall hear the appeal of the petitioner without insisting pre-deposit of Rs.10 Lac.

9. The petition is allowed with the aforesaid observations.

C.M. No.20080/2014 (Stay)

With the disposal of the instant petition, instant application has become infructuous and disposed of as such.

