(2009) 03 P&H CK 0094

In the Punjab And Haryana At Chandigarh

DLF Power Limited — APPELLANT

Vs

Regional Director and Another — RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:
Employees State Insurance Act, 1948 — Section 45A, 75

Citation : (2010) 2 LLJ 529 : (2009) 156 PLR 39

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order passed by Civil Judge (Sr. Division), Faridabad dated 2.1.2009 whereby an application filed by the appellant u/s 75 of the Employees'' State Insurance Act, 1948 (for short ''the Act'') for waiving off deposit in terms of Section 75(2B) of the Act has been dismissed.

2. In the petition, the appellant has challenged the order dated 16.10.2000 passed by the respondent u/s 45-A of the Act vide which the appellant has been asked to deposit Rs. 3,26,445/- within 15 days towards contribution for the period from 1992-93 to 1993-94 along with interest amounting to Rs. 33,147/- upto 31.8.2000. The aforesaid demand was raised by the respondents on the ground that appellant''s factory was inspected by the Area Inspector on 26.4.1994, 16.4.1995 and 21.5.1998 and found that during the period of 1992-93 and 1993-94, there were some omitted wages.

3. The impugned order passed by the respondents was challenged on the ground that reply to the show cause notice sent by the appellant was neither considered nor any opportunity of hearing was provided and the amount in question relates to the employees engaged through contractors who were liable to pay ESI contribution and not the appellant. The respondents contested the plea raised by the appellant on the ground that appellant neither produced any record at the

time of inspection regarding engaging any employee through contractor nor made any representation despite receipt of notice and had also failed to avail the opportunity of personal hearing. The appellant also filed an application u/s 75(2B) of the Act for waiving off the deposit of 50% of the disputed amount in the Court in order to challenge the impugned order passed by the respondent.

4. The learned Court below observed that question of payment of the disputed amount can only be decided after the evidence is brought on record. At this stage, it can not be decided as to whether any representation was made by the appellant or not. In any case relying upon the provisions of Section 75(2B) of the Act, the Court found that there is no ground to waive off the mandatory deposit of 50% amount due and dismissed the application. It was further ordered that appellant shall deposit 50% of the disputed amount i.e. Rs. 3,59,582/- in the Court within one month which shall be deposited in the shape of FDR in the name of Court initially for a period of 2 years and after the decision of the petition that amount along with interest shall be paid to the party entitled to the same.

5. The only argument raised by the counsel for the appellant before this Court is that in view of proviso to Section 75(2B) of the Act, the learned Court below is required to give reasons while not waiving off deposit of 50% of the mandatory amount. Before appreciating the argument raised by the counsel for the appellant, it is necessary to reproduce Section 75(2B) of the Act, which reads as under:

No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees'' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation.

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

6. A plain reading of the aforesaid Section provides that a dispute between the principal employer and Corporation in respect of any contribution or any other dues could be raised by the principal employer in the ''Employees'' Insurance Court only after depositing 50% of the amount claimed by the Corporation. The only relief is provided in the Proviso of the said Section is that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited.

7. In my view, as per the proviso recording reasons in writing would arise in a situation where the Court decides to waive off or reduce the amount to be deposited. In case the Court is not waiving off or is not reducing the mandatory deposit of the amount of 50%, the Court is not required to record reasons in writing, therefore, the argument raised by the counsel for the appellant that reasons have not been recorded even at the stage when the Court has decided not to waive off or reduce the deposit of the amount, is without any substance. Thus, I do not find any merit in the argument raised by the counsel for the

appellant and also any error in the impugned order passed by the Court below, therefore, the present appeal is dismissed in limine.

