(2012) 03 GUJ CK 0031

In the Gujarat High Court

Case No : S.C.A. No. 2498 of 2012

Employees'' Provident Fund Organisation APPELLANT

Vs

Klenzaids Bioclean Devices Pvt. Ltd. RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 15, 17, 7I

Citation : (2013) 136 FLR 971 : (2013) 1 LLN 485 : (2013) LLR 198

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Vasadatta Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The facts in brief are that the respondent herein is covered under the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 and is allotted with PF Code No. GJ/12320-A. On account of serious financial crises, the respondent had not deposited the PF dues in time. Therefore, the petitioner-organization issued show cause Notice to the respondent on 23.8.2004 and subsequently, passed the order dated 8.6.2007 u/s 14B of the said Act. Being aggrieved by the said order, the respondent preferred an appeal being A.T.A. No. 382(5)/2008 before The Employees'' Provident Fund Appellate Tribunal, New Delhi u/s 7-I of the said Act. The said appeal was allowed in part by order dated 27.1.2009 whereby, the damages was restricted to 10% per annum of the arrears of contribution. Against the said order, the present petition has been preferred.

2. Heard learned counsel for the petitioner and perused the documents on record. It was the specific case of the respondent before the competent authority that delay in remittance of PF contribution had occurred on account of the serious financial crises which was faced by the respondent for a long period of time. The respondent had explained all the reasons behind the delay in the

enquiry proceedings and had also sought time to produce the documents to rebut the Enforcement Officer''s Report. It appears that the said request was turned down and the authority proceeded ex-parte and passed the impugned order u/s 14B of the said Act.

3. In Para-8 of the impugned order passed by the Tribunal, elaborate discussion has been made on the issue as to whether an order of damages u/s 14B of the said Act follows in every case of default. For this purpose, it would be relevant to refer to the said Section 14B, which reads as under:

14B. Power to recover damages-Where an employer makes default in the payment of any contribution to the Fund [the [pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 [or sub-section (5) of Section 17] or in the payment of any charges payable under any other provisions of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified u/s 17, [the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer such damager], not exceeding the amount of arrears, as it may think fit to impose.

4. A bare perusal of the above proviso makes it clear that the power u/s 14B of the said Act is not mandatory in nature. In fact, it confers discretion upon the competent authority to impose damages within the ceiling provided under the said Act. Undoubtedly, such discretion has to be exercised in a sound and objective manner. It appears from the record that while imposing the damages in question, no enquiry or finding of fact on the issue whether the respondent had willfully and deliberately with-held the PF contribution, has been recorded. In such circumstance, the Tribunal was completely justified in setting aside the order passed u/s 14B of the said Act and in restricting the damages up to 10% per annum. In my opinion, the Tribunal has not committed any illegality or impropriety while passing the impugned order. Hence, I find no reasons to entertain the present petition. In the result, the petition is summarily rejected.