(2011) 07 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 25084 of 2009 (L-PF)

Glaxo Smith Kline Pharmaceuticals Limited — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 17 (1), 17 (1) (a), 17 (4)

Citation : (2011) 07 KAR CK 0022

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Chander Uday Singh, for Smt. H.R. Renuka, for the Appellant; Jagadeesh Mundargi, AGA for R1 and Sri Harikrishna Holla, for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—M/s. Smith Kline Beech am Pharmaceuticals (India) Ltd., an establishment covered under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, ''the Act'') with Code No. KN/4108 in the State of Karnataka was granted exemption under S. 17(1)(a) of the Act as per the Notification No. SWL/1/LPF/84 dated 27.8.84. In pursuance of sanction of scheme of amalgamation, the said Company and M/s. Glaxo India Ltd., Mumbai, a Mumbai based Company, merged with effect from 1.1.01. After the amalgamation, the Company has been renamed as "M/s. Glaxo Smith Kline Pharmaceuticals Ltd., Mumbai'''', the petitioner herein. M/s. Smith Kline Beecham Pharmaceuticals (India) Ltd., had two provident funds namely (1) Smith Kline Beecham Pharmaceuticals (India) Ltd. - Executives'' Provident Fund and (2) Smith Kline Beecham Pharmaceuticals (India) Ltd. - Employees Provident Fund. The said funds feil within the jurisdiction of the 2nd respondent Regional Provident Fund Commissioner, Bangalore. The subscribers of ''SB Executives'' Provident Fund'' were management staff and other executives at its Corporate Office at Bangalore and the factories at Bangalore and Mysore, in the field.

Subscribers to ''SB Employees'' Provident Fund'' were non management staff and workmen at their Corporate Office at Bangalore and factories at Bangalore and Mysore and field staff employees.

2. The employees of M/s. Smith Kline Beecham Pharmaceuticals (India) Ltd., working in the sites were absorbed as employees of the petitioner, upon the merger, with effect from 1.1.01. Employees at Bangalore factory were offered VRS during 2003 and employees working at Mysore factory were offered VRS during 2004. Some of the employees opted for VRS and resigned by accepting the VRS payments and were paid the PF accumulations in the aforesaid funds. Some of the management staff accepted the common terms of employment and joined the petitioner''s Corporate Office at Mumbai and field staff employees were absorbed.

3. M/s. Smith Kline Beecham Pharmaceuticals (India) Ltd. ceased operations in November, 2003 and its factory at Mysore ceased operations in November, 2004 which fact was intimated to respondent No. 2 on 16.6.04 and 11.3.05 respectively. After settlement of PF accounts of the employees who availed the VRS, certain subscribers left in the said SB provident funds did not accept the common terms of employment and the amounts were not settled and their accounts are still remaining unsettled.

4. Taking into consideration the events which had taken place, the 1st respondent in exercise of its power under S. 17 (4) of the Act ordered for cancellation of the exemption granted vide Notification dated 27.8.84 by issue of a Notification dated 23.3.09, copy of which is at Annexure-H. The petitioner submitted a representation on 8.7.09 and finding that the same has not been considered, this writ petition has been filed to quash the Notification dated 23.3.09, as at Annexure-H and to direct the 2nd respondent to consider the representations dated 19.1.09 and 8.7.09 (Annexures- G & L respectively). The 2nd respondent having considered the representation dated 8.7.09, sent a communication dated 30.11.09, copy of which is at Annexure-M. The said communication was also questioned in this writ petition.

5. The respondent No. 1 and respondents 2 and 3 have filed statement of objections in justification of the action taken respectively by them, impugned in this writ petition.

6. Heard Sri Chander Uday Singh, learned Senior Advocate for the petitioner, Sri Jagadeesh Mundargi, learned AGA for respondent No. 1 and Sri Harikrishna S. Holla, learned counsel for respondents 2 and 3 and perused the writ petition papers. Learned counsel on both sides made submissions based on the respective pleadings of the parties and also on questions of law.

7. It is unnecessary to consider the merits of rival contentions since the impugned Notification at Annexure-H cannot be upheld, on a short ground, namely, violation of principles of natural justice.

8. S. 17(1) of the Act empowers the appropriate Government, by a Notification published in the Official Gazette and subject to such conditions as may be specified in the Notification, exempt from the operation of all or any of the provisions of any scheme, any establishment to which the Act applies, if in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Act or any Scheme in relation to the employees in any other establishment of a similar character. S. 17(4) of the Act provides for cancellation of such an exemption if the employer fails to comply with the conditions.

9. Indisputedly, the 1st respondent granted exemption to M/s. Smith Kline Beecham Pharmaceuticals (India) Ltd., in exercise of the power under Clause (a) of sub-Section (1) of S. 17 of the Act subject to the condition stipulated in the Notification. Respondent No. 2 having reported on 11.8.08 to respondent No. 1 about the merger of the companies, the 1st respondent in exercise of the power conferred under sub-Section (4) of S. 17 of the Act, cancelled the exemption issued under the Notification dated 27.8.84. It is apparent that the 1st respondent acted on the report of the 2nd respondent, copy of which was not furnished to the petitioner and without even affording any kind of opportunity of hearing to the petitioner, the exemption granted under a Notification dated 27.8.84 was cancelled. In my opinion, the 1st respondent while acting under sub-Section (4) of S. 17 of the Act, that too, on a report submitted by the 2nd respondent, ought to have first issued a show-cause notice as to why the exemption granted earlier should not be cancelled. Not resorting to such a procedure amounts to denial of reasonable opportunity of hearing and there is violation of principles of natural justice. Therefore, the 1st respondent has to reconsider the matter.

In the result, the writ petition is allowed in part.

Since the respondents have made known in their statement of objections, the materials based on which the impugned Notification was issued by respondent No. 1, the petitioner shall treat the Notification of the 1st respondent dated 23.3.09 (Annexure-H) as a show-cause notice and submit its reply to the 1st respondent within a period of 4 weeks from today. The materials other than the one which has been placed on record of this writ petition if were to be received by the 1st respondent from respondents 2 and 3, the same be made known to the petitioner and its views obtained.

Upon the receipt of reply if any within the period allowed, the 1st respondent is directed to consider the matter in accordance with law and pass a reasoned Order within 8 weeks from today.

The 1st respondent to take decision in the matter in accordance with law keeping in view the observations made supra, without being influenced by the stand taken on its behalf, in the statement of objections filed to this writ petition.

Contentions of both parties are kept open for consideration. No costs.