(2014) 01 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) 4037 of 2011

Haryana Petrochemicals Ltd. APPELLANT

Vs

Central Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 15 7A

Citation : (2014) 01 DEL CK 0005

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Arunav Patnaik, Ms. Mahima Sinha and Ms. B. Das, for the Appellant; Keshav Mohan and Ms. Amrita Narayan, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated January 31, 2011 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi (''Tribunal'', in short) u/s 7A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (''Act'', in short) whereby the appeal filed by the petitioner against the order of the Regional Provident Fund Commissioner (''Commissioner'', in short) in proceedings u/s 7A of the Act, was dismissed.

The brief facts are that the proceedings u/s 7A of the Act were initiated against the petitioner which is an establishment covered under the Act for assessment of dues for the period 1998-1999 and 2001-2002. The dues which the petitioner failed to deposit were the following:

1. Employee'' share of PF Contributions under the EPF Scheme, 1952 of the period 1998-99 and 2001-2002.

2. Employer Share of PF Contributions under the EPF Scheme, 1952 of the period 1998-99 and 2001-2003. Employer share of contributions under the EPS, 1995 for the period 1998-99 and 2001-2002.

3. Administrative Charges under the EPF Scheme, 1952 for the period 1998-99 and 2001-2002.

4. Insurance Fund Contributions under the Employees'' Deposit Linked Insurance Scheme, 1976 of the period 1998-99 and 2001-2002.

5. Administrative Charges under the Employees'' Deposit Linked Insurance Scheme, 1976 for the period 1998-99 and 2001-2002.

2. For determining the amount due, proceedings u/s 7A of the Act were initiated by the Commissioner by issuing a show cause notice to the petitioner on April 26, 2002. Suffice would it be to say that to enable the petitioner to produce the record, the Commissioner adjourned the hearing for many days. It is noted from the order of Commissioner dated July 01, 2004, none appeared for the petitioner. The Commissioner, on the basis of report submitted by the Enforcement Officer with regard to the dues payable by the petitioner, concluded as under:

SCHEDULE OF DUES

Contributions

Period

Total Amount

1. P.F. Contributions in A/c No. 1

1998-99 and 2001-2002

Rs. 1,78,482/-

2. Pension Contributions in A/c No. 10

1998-99 and 2001-2002

Rs. 14,760/-

3. P.F. Admn. Charges in A/c No. 2

1998-99 and 2001-2002

Rs. 1,11,781/-

4. EDLI Charges in A/c No. 21

1998-99 and 2001-2002

Rs. 6709/-

5. EDLI Admn. Charges in A/c No. 22

1998-99 and 2001-2002

Rs. 134/-

Total

Rs. 3,11,866/-

(Three Lakh eleven thousand eight hundred sixty six only)

Employer is directed to remit the dues alongwith other statutory returns within a fortnight.

3. The petitioner approached this Court earlier by way of a Writ Petition (C) No. 14111/2004 which was disposed of by this Court vide its order dated August 23, 2004, whereby this Court directed the appeal to be heard by the Tribunal. This Court had also directed that no coercive steps would be taken against the petitioner to recover the amount in terms of the order of the Commissioner dated July 01, 2004.

4. In the appeal, the case of the petitioner was that the petitioner has filed an application before BIFR to declare it as a sick company; the production has come to a standstill. In other words, the factory has been closed. In this regard, the petitioner relied upon the following documents

(i) Letter dated 17.08.98 sent to RPFC (A-6)

(ii) Letter dated 17.08.98 sent to Chief Inspector of Factory, Haryana (A-7)

(iii) Letter dated 12.08.98 sent to Chief Engineer, HSEB, HR (A-8)

(iv) Letter dated 07.08.98 received from HSEB regarding disconnection of electricity (A-9) due to non-payment of bills.

(v) Letter dated 12.08.98 received from SE, HSEB regarding disconnection of electricity due to non payment (Annexure A-10).

(vi) Letter dated 15.11.98 sent to Chief Inspector of Factories, Haryana Chandigarh (A-11).

(vii) Letter dated 22.04.99 sent to Asstt. Commissioner, Customer and Central Excise (A-12).

(viii) Balance sheet for the year 1998-99 (A-13). Under Director''s report it is stated, "Plant of the company has been closed since 10.07.98 and no production activities is being carried on since that date.

(ix) Balance sheet 1999-2000, 2000-2001 (Annexure A14 and A-15) proves closures of factory and no production activities.

(x) Letter dated 17.08.98 (A-16) sent to Regional Director, ESI, Faridabad, regarding closure of factory.

(xi) Order of Joint Excise and Taxation Commissioner''s Appeal dated 03.05.2004 proves that there was no turn over during the year 1998 to 2001(A-17).

(xii) Order dated 26.08.03 and 10.12.2003 of Authority under Payment of Gratuity Act established date of closure dated 10.07.98 (Annexure A-18).

(xiii) Inspector report dated 24.09.2002 (A-19) conducted by Shri N.K. Jain, Enforcement Officer states,

Further it is seen from Balance Sheet for 2000-2001 (Annexure A-15 Page 13 and Page 2) and 1999-2000 (Annexure 14 Page 17 and Page 5) that no salary/ wages amount have been shown as paid. There was no employee in the establishment from 08/98 i.e. 11.07.98 to 30.04.2000 and 01.01.2001 to 31.03.2001 (Report of Shri N.K. Jain, Enforcement Officer Annexure A-19).

5. The Appellate Tribunal in its order dated January 31, 2011 while dismissing the appeal, had come to the following conclusion:

The applicability of the Act is not questioned. Once the Act was made applicable it continue to govern until it is proved that the establishment is no more exist. In the decision reported in 2006 Vol. 1 LLJ Andhra Pradesh Page 558 PF Commissioner vs. Kajal & Sons Transport Gudivada, wherein the lordship held that, "once the firm was covered by the Act it continued to be covered by it, till the authorities came to a conclusion that the firm no more exists. In the absence of specific evidence regarding the winding of the firm, the respondent is founded to be liable". In this case, no document was filed to show that the establishment was closed. On the other hand, the balance-sheet shows that the appellant paid the salary of its staff and this fact negatives the claims that the establishment was closed in the year 1998. No infirmity is noticed in the order of the authority.

6. The learned counsel for the petitioner would reiterate the submissions as were pleaded before the Tribunal inasmuch as the factory has been closed and the services of the employees have been terminated. According to him, in that eventuality, the dues are not payable. He would further state that regrettably, the Tribunal has not dealt with the issues raised by the petitioner in the appeal. The Tribunal had only observed that no document was filed to show that the establishment was closed. According to him, such a conclusion is totally perverse. He would rely upon the judgment of this Court in W.P. (C) No. 323/2011 decided on October 17, 2011, Satyam Enterprises Vs. Assistant Provident Fund Commissioner to support his contention that once the factory is closed by following the procedure under the labour enactments and the employees'' services have been terminated, no dues could be computed by the Commissioner. He would also rely upon the judgment of the Allahabad High Court in W.P. (C) 3751 of 1997 decided on July 18, 1986, Jai Krishna Aggarwal Vs. RPFC and Ors. to put forth a similar contention as was decided by the Single Judge of this Court in the case of Satyam Enterprises referred above. He would also rely upon the judgment of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 8767 of 2010 decided on December 22, 2010, Bomin Private Limited Vs. Assistant Provident Fund Commissioner, in which, the High Court relied upon the judgment of the Allahabad High Court referred above. In sum and substance, the submission of the learned counsel for the petitioner is that once a factory is closed, after following the due procedure in terms of the labour enactments, the order u/s 7A raising a demand is unsustainable.

7. On the other hand, the learned counsel for the respondents would submit that even if the proceedings pursuant to a reference u/s 15 are pending with the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the EPF dues would still be payable. The learned counsel for the respondent would rely upon the judgment of the Full Bench of the Madras High Court in Appeal No. 4908 of 2001 and connected appeals decided on October 10, 2006 in support of his contention. I have seen the order of the Tribunal. A perusal of the same would show that the Tribunal with a one liner has concluded that no document was filed to show that the establishment was closed. It is not the case of the petitioner that the establishment was closed. During submissions, the learned counsel for the petitioner concedes that insofar the company is concerned, the same is before BIFR. He would reiterate that the factory where the employees were working, has been closed.

8. The Tribunal was required to go into the aspect as to the effect of establishment being in BIFR on one hand and the factory being closed on the basis of the documents filed by the petitioner before it, and come to a definite finding keeping in view the position of law including the judgments as relied upon the counsel for the parties. Since, there is no adjudication on these aspects by the Tribunal, I deem it fit to remand the matter back to the Tribunal to take into consideration the documents relied upon by the parties and then, decide the appeal afresh, keeping in view the position of law. The Tribunal would be within its right to give minimum of the time to parties to file additional pleadings, if required. Since it is an appeal of the year 2004, it would be appropriate that the Tribunal disposes of the appeal as expeditiously as possible but not beyond a period of six months. Till such time the appeal is heard and decided by the Tribunal, no coercive steps shall be taken by the respondent against the petitioner to recover the amount in terms of the order dated July 01, 2004 of the Commissioner.

9. The W.P. is disposed of in terms of the above. CM No. 8358 of 2011 is accordingly allowed.

