(2013) 05 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14725 of 2011

Inductis (India) Pvt. Ltd. APPELLANT

Vs

Employees' Provident Fund Appellate Tribunal and Another RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 139 FLR 535

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : P.K. Mutneja, for the Appellant; Sanjay Tangri, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajiv Narain Raina, J.—The challenge in this petition is to an order passed u/s 7A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 by the Assessing Authority-cum-Assistant Provident Fund Commissioner (APFC) determining a sum of Rs. 11,669/- on account of driver wages as per trial balance of the year 2008-09 of the petitioner company. The petitioner has been found to have failed to remit contributions and administrative charges towards the Provident Fund dues, the Deposit Linked Insurance Fund and the Pension Fund for the months of April, 2008 to October 2008. The appeal before the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi has failed. The drivers engaged by the officers of the petitioner-company have been held to be direct employees and have accordingly been assessed to dues payable to the Fund. The Appellate order dated 14.6.2011 is P-6.

The brief facts are that the petitioner is engaged in the business of BPO. It does not dispute applicability of the Act. Contributions to the fund have been paid regularly of its employees. On 14.11.2008, a notice was issued to it u/s 7A of the Act alleging default in making contributions with respect to the drivers engaged by its officers. The petitioner responded to the notice and explained from its Summary Trial Balance for the period in question which contains two entries i.e.

"Driver wages allowance" and "Driver wages reimbursement". It was urged that an allowance was given to the officers of the company to engage drivers of their choice for which they were reimbursed. The relationship between the company and the drivers was not one of direct employment with Master- Servant relationship. The wages that the drivers would earn was part of the perquisites of its officers. The relationship between the officers and the drivers was one of personal service. The company exercised no control or supervision over the manner in which work was to be performed which remained the personal prerogative of the officer concerned. The drivers did not perform any task for the company nor were the drivers on the rolls of the establishment and therefore, there was no occasion to maintain their particulars. The Driver wages allowance is paid to officers on a monthly basis as part of then-salary and allowances. The officers claim and receive reimbursement of their salaries paid by them to their personal drivers engaged as per their choice. These wages are fixed as part of "Cost to Company". It is this arrangement which is reflected in the summary trial balance.

Mr. Pawan Kumar Mutneja, learned Counsel appearing for the petitioner submits that the relationship between the petitioner company and the drivers was not one of contract of employment. It was at best a contract for employment between the officers and the drivers. This issue has not been understood, considered or dealt with in the impugned order passed u/s 7A of the Act (P-4) and is, therefore, the order is non speaking and arbitrary. In appeal as well the issue has not been dealt with or considered although specific grounds were taken in the grounds of appeal presented before the appellate authority. Mr. Mutneja would point out to grounds 2 and 3 where the issue was specifically raised in the following terms:

(2) Thus, the pre-requisite for treating any person as employee under the EPF Act is that such person should be employed in or in connection with the work of the establishment and, further, such person should receive his or her wages directly or indirectly from the employer.

(3) The learned Respondent failed to appreciate that the drivers were the personal employees of the officers concerned. These drivers were employed by the Appellant''s officers in their private capacity and paid wages by them again in their individual capacity, and not for or on behalf of the Appellant. Such drivers performed duties for their own employers, viz, the officers concerned. They were not employed in or in connection with the work of the Appellant''s establishment. On the contrary, they were employed in or in connection with the work of the officers concerned who employed them. The wages paid by the officers to the drivers had no nexus with any work of the Appellants establishment. In no case, therefore, could the above drivers be treated as the employees of the Appellant. Therefore, the Appellant could not be called upon to pay any contributions on the salaries paid by the officers to their personal drivers, which the Appellant was reimbursing to the officers as part of their perquisites. The impugned order, thus,

passed is wholly illegal and as such liable to be quashed and set aside.

2. It is therefore, argued that the drivers were not employed in or in connection with the work of the establishment as jurisdictionally required under the Act Learned Counsel has read out the relevant parts of the impugned appellate order in Court. This Court is at a loss to understand as to what weighed either with the assessing authority or with the appellate authority on the issue Mr. Mutneja submits that the amount demanded may appear to be small i.e. only Rs. 11,669/- but the question has wide ramifications on the company''s accounting procedures and therefore, it has approached this Court to vindicate its stand.

Mr. Sanjay Tangri, learned Counsel appearing for the respondent organization has not been able to point out from either of the orders as to the reasons for reaching the conclusion against the petitioner.

3. Absence of reasons militates against the rule of law. The impugned orders are singularly cryptic and appear to have been passed mechanically without due application of mind. The discussion on the sole issue involved in both the impugned orders is so scant in its casual approach that this Court has no hesitation to remand the case at first instance to the Assessing Authority to pass a fresh speaking order u/s 7A of the Act. Resultantly, the writ petition is partly allowed. The matter is remitted to the APFC for fresh determination on the issue of the true nature of the relationship between the drivers, the company and its officers.

