(2000) 09 MP CK 0065

In the Madhya Pradesh High Court

Case No : M.P. No. 1384 of 1992

Khaitan Chemicals and Fertilizers Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 16(1)

Citation : (2000) 87 FLR 922 : (2001) 1 LLJ 1157

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.C. Bagadia, for the Appellant; A.H. Khan, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By this petition filed under Articles 226/227 of Constitution of India, the petitioner-a private limited company questioning the legality and validity of an order passed by Regional Provident Fund Commissioner under the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity hereinafter referred to as Act) dated December 13, 1991 (Annexure p). In short the question that falls for consideration for deciding the fate of this petition is as to from which date i.e. from the date of commencement of trial production or from the date of start of commercial production, the petitioner is entitled to claim the benefit of exemption as provided u/s 16(1)(d) of the Act. According to petitioner this benefit has to be from the date of total production whereas according to respondents (Provident Fund Authority) it should be from the date on which commercial production be commenced. Facts of the case lie in a narrow compass.

2. Petitioner is engaged in the business of manufacture of sulphuric acid. Since it was a new unit, the authorities initially granted provisional coverage of applicability of Act w.e.f. May 31, 1990. Later it was proposed that the coverage shall be from February 28, 1990 and accordingly show cause notice was issued to

petitioner as to why the coverage of Act be not extended from February 28, 1990. In reply to show cause the petitioner contended that the date February 28, 1990 was not the date on which the commercial production had started but on that day (February 28, 1990) only trial production had commenced. On this assertion it was contended that the real date on which the commercial production began which according to petitioner was June 1, 1990. This is how, according to petitioner, the applicability of Act has to be w.e.f. June 1, 1990 and not from February 28, 1990 as proposed in the show cause.

3. On the aforesaid facts the concerned authority (Commissioner) held an enquiry. The petitioner filed several documents such as production documents, letter correspondence and excise papers. These documents were examined by the authority and then the learned Commissioner came to a conclusion that the documents filed by the petitioner clearly demonstrate that the production had begun from February 5, 1987. This is what was concluded by the Commissioner:

"In view of his admission it is crystal clear that the establishment has taken the production of SSP which is one of the manufacturing items of the establishment on February 5, 1987 and has been taken on stock of the establishment and therefore, I do not agree with the contention of the establishment that they had taken the trial production on May 9, 1987."

4. Eventually, the learned Commissioner held that applicability of the Act has to be only from February 28, 1990. This is how the final verdict was given:

"Now, therefore, I, P.C. Sharma, Regional Provident Fund Commissioner in exercise of the powers conferred upon me u/s 7A of the Employees'' Provident Funds & Miscellaneous Provisions Act, 1952 hold that Khaitan Chemicals & Fertilizers Ltd., Nimrani, Distt. Khargone has completed the infancy protection u/s 16(1)(d) of the Act on February 4, 1990 and therefore, it attracts the provisions of the Act from February 28, 1990 instead of May 31, 1990. The date of coverage of the establishment is, therefore, shifted back to February 28, 1990 finally. It is also, ordered that the establishment shall remit the amount of provident fund dues from the said date of its coverage i.e. from March 1, 1990 within 15 days from the date of receipt of this order, failing which the necessary action as provided under the law shall be taken against the establishment."

5. To reach the above mentioned conclusion the learned Commissioner in his reasoned order relied on the decision of Allahabad High Court reported in Regional Provident Fund Commissioner, U.P., Kanpur Vs. Great Eastern Electroplator Ltd., . It was also noted by the learned Commissioner that the view taken by Allahabad High Court in the aforesaid matter was upheld by their Lordships of Supreme Court in CA 580/60 decided on December 18, 1962. This is what the learned Commissioner posed the question and in my opinion rightly and then examined the issues and rendered the findings referred supra:

"Before dealing with the controversies between the parties it is relevant to refer decision in a decided case of Regional Provident Fund Commissioner, U.P., Kanpur

Vs. Great Eastern Electroplator Ltd., wherein their Lordships were pleased to hold:

"the date of establishment within the meaning of 16 (1) will be counted from the date on which the manufacturing process originally started irrespective of the facts that the same was on trial or experimental basis."

The above said decision was also upheld by the Supreme Court vide its decision dated December 18, 1962 in Civil Appeal No. 580 of 1960. From the above said judicial pronouncement it is obvious that the infancy period as provided u/s 16 is required to be counted even from the date of trial production and is not based upon the date of regular/commercial production."

6. Heard Shri S.C. Bagadia, learned counsel for the petitioner and Shri A.H. Khan, learned counsel for respondent.

7. Having heard the learned counsel for the parties I have not been able to find out any fault in the impugned order of learned Commissioner and hence it deserves to be upheld. In my opinion, the view on which the learned Commissioner examined the factual issue was the view of Apex Court. It is therefore, binding me as it ceases to be the view of Allahabad High Court once the civil appeal arising out of such decision is dismissed as noted by the Commissioner with precision. But that apart, even according to factual position that was brought before the Commissioner it was clear that date of production was found to be February 5, 1987 according to petitioners themselves. Their Lordships have not made any distinction between the trial production or/and experimental one. What was emphasised was when the manufacturing process originally started.

8. I do not, therefore, find any basis to take any other view than the one taken by the Commissioner which is the only view that one could have taken based on the law laid down by Allahabad High Court and affirmed by Supreme Court.

9. In view of aforesaid discussion I do not find any merit in this petition, which is dismissed.

No costs.