(2011) 02 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 15604 of 2010

Mahindra Gears and Transmissions Pvt. Ltd. APPELLANT

Vs

Assistant Provident Fund Commissioner, Employees Provident Fund RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2011) 130 FLR 762 : (2011) LLR 602

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; Niral R. Mehta, for the Respondent

Judgement

K.M. Thaker, J.—Present petition is preferred against the order dated 20.10.2010 passed by the Assistant Provident Fund Commissioner in exercise of powers u/s 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"), whereby, the authority has quantified the amounts payable by the petitioner-employer and issued necessary and appropriate directions.

Heard Mr. Dipak Dave, learned advocate for the petitioner and Mr. Niral Mehta, learned advocate for the respondent.

2. In view of the provision of the Act, particularly section 7-1, there is provision for statutory appeal against the order passed u/s 7-A of the Act. Therefore, by virtue of statutory provision, the party who is aggrieved by the order of the Competent Authority u/s 7-A can prefer appeal before the Appellate Tribunal within the period of limitation prescribed by the Act/Rules.

3. Furthermore, the provisions under the Act also require the party seeking to appeal before the Appellate Tribunal to deposit, unless by the learned Tribunal waives the pre-deposit, 75% of the decreetal amount i.e. the amount directed to be paid by the order sought to be challenged. Thus, the aggrieved party is

obliged to make payment of 75% of amount under the order within 60 days'' time if it prefers, an appeal and request the learned Tribunal to pass appropriate order waiving pre-deposit or to request the learned Tribunal to stay the operation of the order passed u/s 7-A of the Act on which such terms as the Appellate Tribunal may consider appropriate.

4. In present case, the petitioner has, however, approached with a grievance that even before the expiry period of limitation prescribed by the statute, the Competent Authority has withdrawn, from its bank accounts almost 90% of the amount covered by the impugned order, and thereby, the statutory available remedy of the petitioner to request the learned Tribunal to completely waive the pre-deposit or to get the appeal heard by depositing 75% of the amount has been rendered infructuous. Besides the said grievance, the petitioner has assailed the order u/s 7-A on various grounds.

5. So far as the grievance against the impugned order and its merits are concerned, since the Act provides for statutory appeal, this Court is not inclined to entertain the petition against the order and/or to examine its merits. The petitioner is obliged to approach the Appellate Tribunal under the Act, if the petitioner desires to challenge the impugned order on merits.

6. At this stage, Mr. Dave, learned advocate appearing for the petitioner has submitted that although the petitioner had approached this Court, by way of present petition much before the expiry period of limitation, however, now the period of limitation prescribed by the Act by preferring appeal has already expired.

7. It is noticed that the Appellate Tribunal under the Act has limited power to condone delay. However, in view of the facts of the case while relegating the petitioner to prefer appropriate appeal before the Appellate Tribunal, it is clarified that it would be open to the petitioner to make appropriate application seeking condonation of delay, if any, in preferring the appeal and in support of the request, the appellant/petitioner may submit that even before expiry of the prescribed period of limitation, the petitioner had already preferred writ petition which was entertained by the Court by issuing notice and also by granting ad-interim relief by virtue of the order dated 08.12.2010. The petitioner may on such additional ground request the learned Tribunal to condone delay. The learned Tribunal would take into account the fact that the petitioner had preferred appeal before the expiry of statutory period of limitation and until today the petition was pending before this Court. Thus, the period consumed during pendency of the petition before this Court may be taken into account by the learned Tribunal while passing appropriate order on the application seeking condonation of delay. It is needless to state that if the petitioner is aggrieved by any order that may be passed by the learned Tribunal on his application seeking condonation of delay, it would be open to the petitioner to take appropriate action against such order in accordance with law.

8. Now reverting to the action of the respondent authority of withdrawing almost entire amount i.e. around 90% or more of the decreetal amount (inasmuch as out of the total amount Rs. 22,26,908/- almost Rs. 21 lakhs has already been given by the authority), it is necessary to note that it has been noticed that the respondent authority is withdrawing the amount (ascertained u/s 7-A order) from the employer''s bank account, even before the expiry of the period of limitation and before the aggrieved party can, in exercise of the statutory right seek appropriate order from the Appellate Tribunal, and thereby, the respondent authority makes the provision authorizing the Appellate Authority to waive the pre-deposit or to require pre-deposit of only 75% of the determined amount, redundant. This is not a solitary case which has come before this Court, and therefore, the Court is constrained to take serious note of the said action of the respondent authority. This time, in present case, the Court would restrain from observing anything further except that it is expected and hoped that any steps or actions making statutory provision ineffective or redundant shall not be taken by the authorities.

9. Since in present case, due to the pendency of the petition, the period of limitation has already expired and the petitioner is relegated to alternative remedy, following order is passed with regard to the amount withdrawn by the respondent authority. The petitioner will submit bank guarantee in the sum of 75% of the amount recovered by the impugned order i.e. Rs. 22,26,908/-. Such bank guarantee shrill be furnished by the petitioner within a week from the receipt of this order. On the day, on which the bank guarantee is submitted the respondent authority shall immediately i.e. on the very same day return the amount withdrawn by it from the account of the petitioner. The bank guarantee can be modified as per the terms and conditions in the order which may be passed by the Appellate Tribunal i.e. if the learned Tribunal, considering the case and its merits, waives the pre-deposit then the bank guarantee shall be returned or if the learned Tribunal passes any order requiring the petitioner to deposit any amount and if amount to be deposited is less than 75% then on actually depositing the appropriate amount, the bank guarantee may be returned. However if the learned Tribunal requires the petitioner to deposit 75% of the amount as required by the statute, then the petitioner shall deposit such amount with the department within a time granted by the learned Tribunal and on such deposit, the Bank guarantee may be returned and until then i.e. for the entry period the respondent authority will be entitled to hold the bank grantee and the petitioner shall have to keep the bank guarantee alive by renewing/extending the validity period.

10. The aforesaid directions are passed with the hope that such type of action will not be repeated by the respondent authority hereafter so as to make the statutory provisions redundant.

11. If the petitioner files an appeal within a period of 3 weeks and the learned Tribunal passes any order as regards the condonation of delay and stay

application then the respondent authority, until then will not take any other coercive action (since more than 75% of the decreetal amount is already in its hands). If the petitioner fails to prefer appeal within a period of 3 weeks and/or requesting the learned Tribunal to pass appropriate order of condonation of delay and on stay application, it would be open to the respondent authority to take appropriate action in accordance with the law in respect of the impugned order.

12. With the aforesaid clarifications and directions, the petition is disposed of.

13. It is needles to state that the learned Tribunal will decide the appeal and application for stay of the order in accordance with law and independently without being influenced by any order i.e. the order passed u/s 7-A and/or this order. However, so far as the application for condonation of delay is concerned, the learned Tribunal would take into account the observation made in present order and pass appropriate order in accordance with law.

