
(2012) 08 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4309 of 2010 (O and M)

M/s. Bajaj Brick Kiln Industries

APPELLANT

Vs

Reg. P.F. Commissioner and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17B

Citation : (2012) LLR 1105 : (2013) 1 SCT 319

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Surinder Garg, for the Appellant; Rajiv Sharma, Advocate for Respondent Nos. 1 and 2, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner has approached this Court seeking a direction to respondents No. 1 and 2 to recover the amount of damages levied u/s 14-B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short "the Act") from respondent No. 3 with a prayer to refund the amount of damages deposited by the petitioner under protest, along with letter dated 5.3.2008. Learned counsel for the petitioner submitted that the petitioner had purchased a brick kiln, earlier owned by Mukund Lal. The firm was known as M/s Bajaj Brick Kiln Industries. As a result of the settlement between the parties, earlier firm, which was under the proprietorship of Mukund Lal, stood dissolved on 29.8.1995, which was taken over by the petitioner. As there was some default on account of provident fund dues for the period prior to the petitioner's taking over the firm, as per the terms in the retirement deed, the earlier owner, namely, Mukund Lal had to discharge his liability up to the date of his retirement i.e. 25.8.1995. He further submitted that even as per the provisions of section 17B of the Act, only recovery of contribution could be made from the petitioner and not the damages as has been held by Division Bench of Karnataka High Court in Regional Provident Fund Commissioner, Mangalore v. M/s Karnataka Forest Plantations Corporation Ltd. Bangalore, 2000 (3) L. & SJR 380.

2. On the other hand, learned counsel for respondents No. 1 and 2 submitted that in terms of the provisions of section 17B of the Act the transferor and transferee of an establishment are equally liable to pay the contributions, including even the damages, as aforesaid Section does not make any distinction in the contributions and damages. He further submitted that the damages have been levied on the petitioner for the period, which included the period prior to the petitioner's taking over the establishment and even subsequent thereto. The petitioner being aggrieved against the order never challenged the same by filing appeal before the Employees' Provident Fund Appellate Tribunal in terms of the provisions of the Act. Present writ petition filed by the petitioner, is highly belated.

Heard learned counsel for the parties and perused the paper-book.

Though neither the copy of the order placed on the record by the respondents as Annexure R-1 shows the date of passing of the order nor even in the reply. Columns where date is to be shown, have been left blank, which shows utter casualness on the part of the respondents. It can be inferred from the record that the order refers to date of hearing as 16.12.2002, apparently the order was passed thereafter. There is another order on record (Annexure P-3) dated 19.4.2004 requiring payment of amount already assessed on account of damages. The aforesaid communication was addressed to the transferrer, namely, the earlier owner Mukund Lal. Amount was ultimately paid by the petitioner in the year 2008. In his letter written to the Regional Provident Fund Commissioner, Bhatinda (Annexure P-5), the petitioner had acknowledged that on 14.4.2004 Enforcement Officer was deputed to recover the amount from the petitioner. The present petition was filed in this Court on 10.3.2010. The order levying damages u/s 14B of the Act pertains to the period 3/92 to 5/95, 9/95 to 9/98, 11/98 to 2/99 and 4/99 to 11/2001. It does not pertain only to the period the petitioner was not the owner of the establishment, rather even for the period after the petitioner had taken over the establishment. If the petitioner was aggrieved against the order passed in 2002-03 (as specific date has not been mentioned anywhere in the pleadings), he should have availed of the remedy of appeal at that time. He having failed to do so, at that stage cannot be permitted to raise the issue 7/8 years after passing of the order.