(2011) 10 MAD CK 0198

In the Madras High Court

Case No : Writ Petition (MD) No. 3673 of 2011 and M.P. (MD) . No''s. 1 and 2 of 2011

M/s. DCW Employees Co-operative Canteen Ltd. APPELLANT

Vs

The Presiding Officer, Employees Provident Fund Appellate Tribunal and The Assistant Provident Fund Commissioner, Employees' Provident Fund Organization RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 16(1), 7I, 7Q

Citation : (2011) 10 MAD CK 0198

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Chandrabose, for the Appellant; K. Muralishankar for R2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is a DCW employees Co-operative Canteen, represented through its Special Officer, situated in Arumuganeri. In this writ petition, they have challenged the order passed by the Employees Provident Fund Appellate Tribunal in ATA 794(13) 2009. By the impugned order, the first respondent Tribunal rejected the review application and confirmed its earlier order dated 19.07.2010 dismissing the appeal and confirmed the order of the authorities in levying damages u/s 14-B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the Act).

2. It was the case of the petitioner that the petitioner''s establishment is a registered Society under the Tamil Nadu Cooperative Societies Act run by the employees'' on cooperative basis for supplying snacks and food packets on subsides and on marginal rates. The employer provides all infrastructure and

bear the maintenance expenses and also grant substantial subsidy and the Society is running on ''No Profit No Loss basis''. The society is engaging below 50 employees. In terms of Section 16(1)(a) of the Act the petitioner establishment was Exempted establishment.

3. For a long time, the canteen used fire woods for fuel without the aid of electricity. Only on 01.12.2004 electricity power was used for operating the wet grinders as well as the air conditioner for storage of vegetables. But on the basis of usage of power, the respondent department started sending notice claiming coverage was made effective from 01.04.2004 and not from 01.12.2004, the date on which the usage of electricity for the purpose of cooking ovens and air conditioning maintenance.

4. The authorities claimed payment for the period 01.04.2004 to 31.07.2007 at Rs. 3,59,579/- and gave 7 days time to remit the account. As they did not have any reserved fund and suddenly this was claimed, they some how mobilised the amount and paid the amount on 19.07.2009 within the 7 days time referred by them. Thereafter, notice for enquiry u/s 14-B) of the Act was issued. The petitioner canteen pointed out that there was no delayed remittance. Even for the pre-discovery period, no damages can be levied even as per the EPF Departmental circular. Notwithstanding the same, the damages were levied for the belated payment of money from April 2004 to February 2007 to the tune of Rs. 2,02,694 u/s 14-B of the Act and Rs. 68,577/- u/s 7-Q of the Act towards interest.

5. The petitioner filed an application for review and the request was rejected on 21.10.2009. Thereafter, they preferred an appeal u/s 7-I of the Act before the first respondent/Tribunal which was also rejected. As against the rejection, they preferred a review petition before the Tribunal, the review was also rejected stating that there was no case for review, as no new facts were brought out. Therefore, they are before this Court. It is also submitted that they paid the entire interest of Rs. 68,577/- on 01.09.2009.

6. A perusal of the order of the Tribunal dated 19.07.2009 shows that the Tribunal made a very cryptic order and they did not answer the grounds raised in the grounds of appeal.

7. Before the Tribunal it was urged that the Society was running on "No Loss No Profit" basis and the power was used only from 01.12.2004, but the respondent department started sending notice claiming coverage with effect from 01.04.2004, which is erroneous. After the said notice, entire amount have been paid. Even the interest have been paid. Therefore, this is not the case where the authority must exercise a discretion in levying damages. In the order passed by the Tribunal, these facts are not taken by the Tribunal.

8. The judgment in Halwasia Vidya Vihar (Sr. Sec. School) Haryana Vs. The Regional Provident Fund Commissioner, , will have a bearing on the subject, wherein in paragraph 6 it has held as follows:

6. ... In the instant case there was no allegation that there was any delay in making the deposit with the Government under the scheme which was being followed by the appellant. Even otherwise in S.D. College case1 also this Court did not maintain the levy of damages at 100% and reduced it to 25%. Taking into account the special features involved, we direct that the damage imposed shall be restricted to 25% of the amount levied by the respondent Commissioner.

9. Further the Supreme Court in M/s. K. Streetlite Electric Corporation Vs. Regional Provident Fund Commissioner, Haryana, , in paragraph 5 has held as follows:

5. The second contention need not be examined in the view we propose to take in the matter. Even if we hold that the Central Government instructions issued u/s 20 of the Act are not binding on the respondent, still in assessing the damages it will be necessary for us to take note of the manner in which the amounts of damages have been levied and appropriately consider as to what would be the correct rate of damages to be imposed u/s 14-B of the Act. The statement of calculation prepared by the respondent regarding delay in payments discloses that the respondent has imposed damages at different rates, for example, for the month of July 1976 the rate of damages is 50% whereas the period of default is over a month, while in case of December 1976 the damages imposed upon the appellant are at the rate of 20% though the period of delay is over two months, in the case of delay for April 1988 damages imposed are at the rate of 30% though the period of delay is only one month. In certain cases, even for a delay of below 15 days, like October 1977, damages at the rate of 85% have been imposed, while for another period though the delay is for six months 65% damages have been levied. Therefore, it is not possible to discern the rationale adopted by the respondent in the matter of imposition of penalty. In the circumstances, therefore, it would have been appropriate for us to set aside the order and remit the matter to the respondent, but we do not think that such an exercise is necessary after such a long period. In this case, the amount due towards provident fund has already been deposited and this Court, by order dated 18-12-1998, granted an interim relief to the extent of 75% of the amount of damages sought to be recovered, while out of the disputed amount of damages (that is, Rs 88,731.25) 25% had already been directed to be deposited. In that view of the matter, we think, it is appropriate to confine the damages leviable in this case on an overall consideration to the extent of 25% of the total damages imposed.

10. In both the cases the Supreme Court without remanding the matter reduced the damages to 25%. So, in the present case, the fact that the petitioner Society is running by workers on a "No Loss No Profit" basis and it started using power only on 01.12.2004 was not disputed by the respondent. But, immediately, when the coverage notice was given, within the stipulated time of 7 days they paid the entire amount. Subsequently, they also paid the interest on the delayed payment. Therefore, for the purpose of levying damages, the respondent should

have given specific reasons, which is lacking in this case.

11. In the light of the decision laid down by the Supreme Court, this Court is oblige to interfere with the order of the Tribunal confirming the order of the second respondent and the writ petition is partly allowed and this Court is inclined to adopt the ratio adopted by the Supreme Court. Accordingly, the petitioner will be directed to pay only 25 % of the damages levied and not beyond that and to that extent, the petitioner is entitled to succeed. The writ petition is allowed partly with a direction to the petitioner to pay 25% of the damages claimed. Consequently, the connected miscellaneous petitions are closed. No costs.