(2009) 01 KL CK 0038

In the High Court Of Kerala

Case No : W.A. No. 2396 of 2008

M/s. Muthoot Pappachan Consultancy and Management Services — APPELLANT

Vs

Employees Provident Fund Organisation and Others — RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7O

Citation : (2009) 121 FLR 165 : (2009) 2 ILR (Ker) 108 : (2009) 1 KLJ 370 : (2009) 1 KLT 341 : (2009) 3 LLJ 405

Hon'ble Judges : P.R. Ramachandra Menon, J;Kurian Joseph, J

Bench : Division Bench

Advocate : C.M. Stephen, for the Appellant; T.N. Girija (S.C.), for the Respondent

Judgement

Kurian Joseph, J.—Petitioner is the appellant. Appellant is aggrieved by Ext. P13 order passed by the Appellate Tribunal under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The said order is passed in exercise of the powers u/s 7-O of the Act. That order happened to be passed at the time of admission of Ext. P8 appeal filed against Ext. P7 order passed by the first respondent. Section 7-O reads as follows:- 7-O. Deposit of amount due, on filing appeal.-No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in Section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

In Ext. P13 order we find that instead of the normal pre deposit of 75% the petitioner has been permitted to remit 25% of the amount assessed. But we do not find any reasons recorded by the Appellate Tribunal in reducing the percentage from 75 to 25. The contention of the appellant is that in case the authority records its reasons, it can be found in the process that the actual liability, even if the liability is admitted, would be around Rs. 25 lakhs. Learned Senior Counsel appearing for the Organisation submits that since the appellant has already approached the Tribunal and since the Tribunal has already exercised its discretion u/s 7-A, all those contentions are not open to the appellant.

The deposit of 75% u/s 7-O is a pre condition for maintaining the appeal and not a condition for staying the operation of the order under appeal. u/s 7-O the normal rule is deposit of 75% of the amount assessed u/s 7-A. However, under the proviso, the Tribunal is given a power to either waive or reduce the deposit. For the exercise of the power under the provision the Appellate Tribunal has to record its reasons as to why the pre-deposit is waived or reduced. Since the proviso to Section 7-O has given a wide discretion to the appellate authority either to reduce or even to waive the pre-deposit as such, the statute has insisted that the appellate authority should record its reasons in writing, lest the authority should exercise its power arbitrarily. Therefore, in cases where the appellate authority intends to exercise its power under the proviso to Section 7-O of the act, the authority should record its reasons for the exercise of its power either for reducing the percentage of pre-deposit or for waiving the same. On a reading of the impugned Ext. P13 order, we do not find that the Appellate Tribunal has recorded any reason for the exercise of the power under the said proviso. Therefore, we are of the view that the Appellate Tribunal should be directed to pass a proper order u/s 7-O of the Act. Learned counsel for the appellant submits that as a prelude to such exercise of power, the appellant has no objection in remitting an amount of Rs. 25 lakhs subject to the order passed by the Tribunal u/s 7-O.

2. Accordingly we set aside the judgment of the learned single Judge. Ext. P13 is quashed. There will be a direction to the 4th respondent to pass a proper order in the light of the observations contained in this judgment, with notice to the appellant, within a period of three months from today. The appellant shall remit the amount of Rs. 25 lakhs, in addition to any recovery already made, within two weeks from today and a memo to that effect shall be filed before the Appellate Tribunal.

The writ appeal is disposed of as above.

