(2017) 02 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : CWP No.20962 of 2010(O&M)

M/s Nalanda Spinners Limited — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

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

Citation : (2017) 153 FLR 196

Hon'ble Judges : Mr. Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Mr. Viren Jain, Advocate, for the Petitioner; Mr. Karminder Singh, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed off

Judgement

Mr. Rajiv Narain Raina, J. (Oral)—The challenge in this petition is to the order passed in appeal against an order passed by the Regional Provident Fund Commissioner under Section 14-B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. The Appellate Tribunal at New Delhi, has affirmed the orders of the lower authority by imposing 100% damages for delay in payment of contributions vide the impugned order from which this writ petition arises filed by the establishment. Question of default no longer subsists in this case because the amounts admittedly stand paid along with interest determined under Section 7-Q. The amount involved in this case is Rs. 3,71,616/- being a punitive liability saddle on the petitioner-company, the details of which are found at page 62 of the paper-book (Annex P.22). Although Section 14-B empowers the authority to impose damages to the extent of the recovery but like all power, jurisdiction has to be exercised reasonably. In cases of economic offences or default in timely payment of contributions etc., there must be accompanying mens rea with overt intention to deliberately violate the law before the punitively extreme and oppressive financial burdens are created by the authorities under the Act. A reading of the appellate order leaves much to rejoice.

2. There is no meaningful discussion as to why 100% damages were leviable and not any lesser amount. To support 100% damages something more would have to be said in the order showing reprehensible and incorrigible conduct of the establishment in making successive defaults and deceiving subscribers and the organization.

3. The petitioning establishment had pleaded before the authorities in the organization that once business began to shrink the employment strength of their factory had to be drastically reduced from 266 workers to just 5 because of recession and change of market conditions in exports of woollen garments which were once being exported abroad. When the market crashed so did the business which was once flourishing This is how the company fell in bad times resulting in failure to deposit contributions in time. Though mitigating facts were pleaded before the appellate authority but no attention was paid to analyse them and record the findings in the appellate order.

4. Learned counsel for the petitioner submits that initially proper opportunity of hearing was not given by the Assistance Provident Fund, Commissioner who passed a mechanical order imposing 100% damages. It may be true that financial problems alone are not fool proof defence against failure to deposit contributions over a period of time but each case has to be examined on its own facts. The petitioner company had approached the Board for Industrial and Financial Reconstruction under SICA Act but the application was dismissed and, therefore, the appellate authority has remarked that it is common amongst industrial establishments to take such pleas and plea is not sufficient ground to excuse default in depositing contributions to the Fund.

5. The appellate authority has not touched the main question of mens rea. It has also miserably failed to notice or deal with Paragraph 32-A of the Employees'' Provident Funds Scheme, 1952 as amended from time to time which deals with recovery of damages for default in payment of any contribution. Para. 32-A prescribes the rate of damaged leviable in a table treating different periods of default with different rates of damages being the percentage of arrears per annum. The maximum rate of damages beyond 6 months is 25%. It was earlier 37% for defaults for periods above 6 months when the law was clarified on 26.09.2008 explaining that 37% included 12% of interest and that is how the table is reduced to maximum 25% damages. This vital aspect has been conveniently ignored making the impugned order legally unsustainable and one which has been passed with material irregularity and apparently in a hurry without due reflection and record in hand.

6. For these reasons, I find that the order is non-speaking and wholly bereft of reasons and is based on ipse dixit, conjectures and surmises. The appeal has been decided on mere generalizations without even adverting or referring to relevant facts and figures. There is no justification in the order as to why maximum penalty should be imposed. The appellate Tribunal has to go into both law and facts before making orders. The order suffers from lack of application of

mind. Relevant materials have not been considered and irrelevant considerations have played their part. The work is slipshod, cursory and difficult to review judicially.

7. I would, therefore, set aside the impugned order dated 31.05.2010 passed by the appellate authority and remand the case for passing a fresh self-speaking order in accordance with law after dealing with all issues raised by the petitioner.

8. The parties to appear before the Tribunal on 28.02.2017. Both the parties would be at liberty to lead any further material/evidence etc. in support of their respective cases. The amount of Rs. 50,000/- deposited by the establishment with the department shall be kept in status quo and would remain adjustable towards the final order.

