(2017) 11 DEL CK 0485

In the Delhi High Court

Case No : Civil Writ Petition No. 10050 Of 2017

M/S Profacilities Services Pvt Ltd. APPELLANT

Vs

Central Board Of Trustees (CBT) And Anr RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Employees' Provident Fund And Miscellaneous Provisions Act, 1952 — Section 7A, 7O

Citation : (2017) 11 DEL CK 0485

Hon'ble Judges : Chander Shekhar, J

Bench : Single Bench

Advocate : Keshav Mohan, Piyush Choudhary, Rajesh Kumar

Final Decision : Disposed Of

Judgement

Chander Shekhar, J

CM No. 41001/2017

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 10050/2017 and CM No. 41000/2017

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for quashing of the impugned order dated 19.09.2017

passed by Presiding Officer, Central Government Industrial Tribunal (CGIT), Delhi in Appeal No. D-1/06/2017.

2. Notice. Mr. Rajesh Kumar, Advocate accepts notice on behalf of the respondents.

3. Learned counsel for the petitioner has submitted that the petitioner is a company registered under the Companies Act, 1956, engaged in a business

of Property Management covered under the Employeesâ?? Provident Fund and Miscellaneous Provisions Act 1952 vide Code No., DSSHD/936818

and is complying with the provisions of Act.

4. Learned counsel for the petitioner further submitted that an inquiry under Section 7A of the Act was initiated against the petitioner vide summon

dated 29.09.2015 for assessment of dues for the period from April 2014 to March 2015, for alleged non-compliance of the Act in respect of workers

engaged through contractors, during the course of inquiry, authorised representative of the petitioner filed each and every documents as desired by the

said authority. He also submitted that the establishment had produced the details of contractors with a request to summon those contractors as

witnesses, but the respondent/inquiry officer was not inclined on issuing notice to the contractors for recording their statements. He further submitted

that the respondent also failed to issue notice to the establishment, which are independently covered under the Act and shifted the burden upon the

petitioner to produce the PF Code No. of those establishments.

5. Learned counsel for the petitioner further submitted that the respondent has not supplied the copy of the report dated 24.04.2017 to the petitioner

establishment, upon which the entire basis of the impugned order stands. He has also submitted that a copy of the report dated 24.04.2017 has not

been supplied by the respondent to them. It is also stated by learned counsel for the petitioner that the authorised representative of the petitioner

regularly appeared before the 7A authority, however no report was supplied to them during the course of the proceedings to file objections to the

same.

6. It is also submitted by the learned counsel for the petitioner that the assessing officer retyped the calculations made by the Enforcement Officer

(EO) in the impugned order without examining its contents and without giving a chance to negate the contents of the report and assessed the dues on

the basis of assumption and presumptions.

7. Learned counsel for the petitioner also submitted that as per the relevant provisions of the Act, dues shall be calculated on basic wages, dearness

allowances and retaining allowances, but in the present case the 7A authority took 70% of the total amount paid as wages for Provident Fund

deductions and accordingly dues were calculated. It is also submitted that the assessing officer ignored the relevant document like salary sheet and attendance sheet.

8. During the course of the arguments, learned counsel for the petitioner submitted that there is lack of reasoning given in the impugned order to deposit 60% of the amount, as a pre deposit under Section 7-O of the Act.

9. Learned counsel for the petitioner submitted that the petitioner is ready to deposit 25% of the amount in cash and remaining 25% amount through bank guarantee with the Appellate Authority i.e. Central Government Industrial Tribunal cum Labour Court No.1.

10. Learned counsel for the respondent vehemently opposed the submissions made by the learned counsel for the petitioner and relied upon the certain judgments wherein the amount varied from 25% to 75%. However, at the end, the counsel for the respondent submitted that without prejudice to the contentions of the parties and without it being a precedent, if the petitioner deposits 25% of the amount in cash and remaining 25% through bank guarantee with the appellate authority, as is suggested by the learned counsel for the petitioner, he has no objection if the appeal is heard.

11. Accordingly, in view of the above facts and in the interest of justice, the impugned order dated 19.09.2017 stands modified to the extent that the amount of the pre-deposit stands reduced from 60% to 50% out of which 25% shall be deposited by the petitioner in cash and the other 25% shall be furnished by the petitioner in the form of the bank guarantee within six weeks. However, this order shall not be construed as precedent.

12. The appeal shall be heard only after the deposit of the said amount. However, parties shall appear before the Tribunal on 23.11.2017.

13. Accordingly, the present petition as well as the pending applications are disposed of.