(2018) 05 DEL CK 0167

In the Delhi High Court

Case No : WP (C) 5569 OF 2015 & CM APPL. 10021 OF 2015

M/S. SIMPLEX INFRASTRUCTURES LIMITED — APPELLANT

Vs

CENTRAL BOARD OF TRUSTEES E.P.F. ORGANIZATION — RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7Q, 7A, 7O, 7I
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 05 DEL CK 0167

Hon'ble Judges : VINOD GOEL

Bench : Single Bench

Advocate : Rajiv Arora, Inderjeet Sidhu

Final Decision : Disposed Of

Judgement

@GMENTTAG-JUDGMENT

1.The petitioner has challenged the order dated 18.05.2015 under Article 226 and 227 of the Constitution of India passed by Employeesâ??

Provident Fund Appellate Tribunal, New Delhi (in short â??the Tribunalâ??) in the appeal being ATA No.498(4)2015.

2.While considering the interim relief during the pendency of the appeal challenging the order dated 31.03.2015 issued against it under Section

14B and Section 7Q of the Employeesâ?? Provident Funds and Miscellaneous Provisions Act, 1952 (in short â??the EPF Actâ??), the

Tribunal observed that the appeal is against the order under Section 14B and Section 7Q of the EPF Act and the petitioner is supposed to

deposit the assessed amount under Section 7Q of the EPF Act since the order under Section 7Q of the EPF Act is not appealable. The Tribunal stayed the impugned order dated 31.03.2015 subject to the petitioner/appellant depositing the amount assessed under Section 7-Q of the Act

with the concerned authority within 30 days, failing which the appeal shall be deemed to be dismissed. In fact, the impugned order dated

31.03.2015 is a composite order passed under Section 14B and 7Q of the EPF Act and in view of the judgment of the Apex Court in Arcot

Textile Mills Ltd. vs. Regional Provident Fund Commissioner, AIR 2014 SC 295, such order impugned before the Tribunal is appealable. Since

the order impugned before the Tribunal was under Section 14B and 7Q of the EPF Act, the petitioner was not required to pre-deposit any

amount under Section 7-O of the EPF Act as assessed and determined by EPFC.

3.A Division Bench of this court in Jai Balaji Security Services (Regd.) Vs. A.P.F.C. Delhi (North) in LPA No. 880/2015 decided on

16.12.2015 has dealt with the scope of power of the Tribunal to grant interim relief during pendency of the appeal. Para 15 and 19 of the

judgment read as under which read as under: - â??15. But that would not mean that if an aggrieved person, who has challenged an order under

Section 7Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate

Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O

puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section

7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal

has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, but the

pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order

concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.â? â??19. We reiterate once again.

Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount

assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where

demands raised under Section 7-Q and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the

Proviso to Section 7-O of the Act.â??

4.It is conveyed from the above said judgment that the Tribunal would be empowered to pass a conditional order of stay during the pendency of

appeal where the demand raised under Section 14-B and 7-Q of the EPF Act has been challenged. Mere pendency of appeal would not prohibit

the EPF Authority to effect recovery unless Tribunal stays the recovery by interim order during subsistence of appeal subject to certain

conditions.

5.On a close scrutiny of the impugned order of the Tribunal, it appears that the Tribunal has directed the petitioner to deposit the amount as

assessed under Section 7-Q of the EPF Act under a wrong impression that the part order under Section 7-Q of the EPF Act is not appealable

whereas it is a composite order under Section 14B and 7Q of the EPF Act and hence appealable in view of the judgment of the Apex Court in

Arcot Textile Mills Limited (supra). Therefore, the impugned order dated 18.05.2015 of the Tribunal is hereby set-aside with the direction that

the Tribunal shall decide the request of the petitioner for interim relief afresh on such terms and conditions as it may deem fit during the

pendency of the appeal.

6.The petition is disposed of accordingly.

7.CM APPL. 10021/2015 is disposed of as infructuous.