(2019) 08 DEL CK 0209

In the Delhi High Court

Case No : Civil Writ Petition No. 8826 Of 2019, Civil Miscellaneous No. 36490 Of 2019

M/S Wear Well India Pvt. Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner, And Anr RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Employees' Provident Funds & Miscellaneous Provisions Act, 1952 — Section 7Q, 14B

Citation : (2019) 08 DEL CK 0209

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : S.K. Khanna, Shivanath Mahanta

Final Decision : Disposed Off

Judgement

Rekha Palli, J

W.P.(C) 8826/2019 & CM No.36490/2019 (for stay)

1. The present petition under Articles 226 and 227 of the Constitution of India seeks quashing of the show-cause notice dated 19.07.2018 as also the order passed by the respondents under Section 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 ('the PF Act' for short) on 16.01.2019 whereby the petitioner has been directed to pay a sum of Rs.46,32,737/- as penal interest for the period 19.01.2014 to 02.06.2018. The petitioner also seeks quashing of the consequential attachment order dated 13.06.2019 issued by the respondent no.2.

2. Learned counsel for the petitioner submits at the outset that the petitioner is giving up his challenge to the show cause notice, and is pressing the present petition only to seek quashing of the order dated 16.01.2019 and the consequential notice of attachment dated 13.06.2019.

3. He submits that on 19.07.2018, the petitioner was served with a show cause

notice proposing to impose damages and interest on it for the alleged delay in making the requisite deposit in terms of the Act. In response thereto, the petitioner had given a detailed reply on 01.08.2018 making the following submissions:

"1. On checking, it is found that period upto 02/2014 has already been assessed and charged by the Asst. PF Commissioner Sh. Ashvani Kumar vide its order No.DS/NHP/24715/000/ENF501/damages/7404 dt. 25/02/2015. Hence the correction may please be effected in the sheet from 03/2014 onwards and revised sheet may please be issued accordingly.

2. It is noticed that 05/2014 contribution was deposited on 30/01/2015 instead of 04/02/2015. Hence may please be corrected (Copy of the challan attached herewith for ready reference).

3. It is noticed that 06/2014 contribution was deposited on 04/03/2015 instead of 05/03/2015 (Copy of the challan attached herewith for ready reference).

4. It is further noticed that 10/2015 contribution was deposited on 23/04/2016 instead of 25/04/2016 (Copy of the challan attached herewith for ready reference) hence correction may please be effected."

4. Learned counsel for the petitioner submits that though the respondents had granted personal hearings to the authorized representative of the petitioner, the respondents have not dealt with any of the petitioner's submissions as made in its detailed written representation, while passing the impugned order. By placing reliance on the order dated 09.02.2017 passed by a coordinate Bench of this Court in M/s. Adigear International vs. Central Board of Trustees [WP(C) No. 12257/205], he submits that such an order is not sustainable and therefore, prays that the same be quashed.

5. On the other hand, learned counsel for the respondents, on instructions from Mr. Saurabh Kumar, Regional Provident Fund Commissioner-II who is present in court, submits that since the petitioner had been granted adequate opportunities to be heard during which they did not produce any sufficient and relevant material in support of their claim, the respondents have acted bonafidely and strictly in accordance with the scheme of the Act while passing the impugned order. He, therefore, prays that the writ petition be dismissed.

6. I have heard the learned counsel for the parties and with their assistance perused the record.

7. A bare perusal of the impugned order dated 16.01.2019 shows that the respondents, after reiterating the facts of the case as set out in the show cause notice, have thereafter merely referred to the personal hearings granted to the petitioner. Evidently, without even dealing with any of the contentions raised by the petitioner, the impugned order simply states that under exercise of powers conferred upon the respondents under Sections 14B and 7Q of the Act the petitioner was liable to pay the penal interest as determined under the order.

8. The impugned order is not only wholly unreasoned but also violates the principles of natural justice. Once the petitioner had given a detailed reply to the show cause notice, it was incumbent upon the respondents to deal with those contentions howsoever briefly while passing the order, which in essence fastens a huge financial liability upon the petitioner. In my view, the order ought to contain at least the basic reasons for not accepting the petitioner's explanation. On this ground alone, the impugned order is liable to be set aside. I am fortified in my aforesaid conclusion by the decision of this court in M/s. Adigear International vs. Central Board of Trustees (supra) upon which reliance has been placed by the learned counsel for the petitioner.

9. Accordingly, the writ petition is allowed. The impugned order dated 16.01.2019 and the consequential attachment order dated 13.06.2019 are quashed and the matter is remanded back to the respondent.

10. The petitioner will appear in the office of the respondent on 05.09.2019 at 3 pm at RO, Delhi (E), on which date the respondents will give a personal hearing to the petitioner. The petitioner is also permitted to file a brief of its submissions with the respondents. The respondents will thereafter pass a fresh reasoned order dealing with all the contentions of the petitioner within a period of eight weeks.

11. Needless to say, if the petitioner is aggrieved by the fresh order passed by the respondents, it will be open for it to take legal recourse as permissible under law.

12. At this stage, learned counsel for the petitioner submits that the respondents have already recovered a sum of Rs.15,94,952/- and therefore, prays that the respondents be directed to refund back the said amount.

13. In my view, since the matter is being remanded back to the respondents with direction to pass a fresh reasoned order within eight weeks, no case is made out for directing any refund of the said amount. It is, however, made clear that in case it is found that the petitioner was not liable to pay any amount towards interest, the amount already recovered by the respondents will be refunded back to the petitioner with interest @ 8 % per annum.

14. The writ petition is disposed of along with the pending application in the aforesaid terms.