(2010) 04 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 1687 of 2010

New Great Eastern Spinning and Weaving Co. Ltd. APPELLANT

Vs

Central Board of Trustees and Others RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 7, 7(2)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 21(1)
Limitation Act, 1963 — Section 14, 29(2)

Citation : (2011) 1 LLJ 757

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Sudhir Talsania, S.C., Vishal Talsania and Pallavi Dedhia, instructed by Sanjay Udeshi and Co, for the Appellant; S.V. Bharucha, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard finally.

2. The Petitioner has challenged the impugned order dated November 11, 2009 passed by the Employees Provident Fund, Appellate Tribunal, New Delhi and thereby, dismissed the Appeal on the ground of limitation, that resulted into dismissal on merits also.

3. The Petitioner is a sick Industry since, 1987. There is no serious dispute that the Application u/s 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the Act"), was filed for waiver of damages referring to the basic order dated January 11, 2008. Trie same was rejected by letter dated March 20, 2009 received on March 25, 2009 The Petitioner, thereafter, preferred an Appeal on June 5,2009 u/s 71 of the Act, and thereby challenged both the orders.

4. Sub-rule (2) of Rule 7, of the Employees'' Provident Funds Appellate Tribunal (Procedure) Rules, 1997, provides that the Appeal against any order be preferred within a period of 60 days, which is extendable by a further period of 60 days.

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5. The Apex Court in Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, , has elaborated the purpose and scope of Section 14B of the Act as under:

Section 14B empowers the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette to recover from the defaulting employer damages which shall not exceed the arrears. First proviso to this Section casts a duty on the officer concerned to give the employer reasonable opportunity of hearing before imposing and recovering damages. Second proviso thereto empowers the Central Board to reduce or waive damages levied in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board of Financial and Industrial Reconstruction.

The scheme and purpose of both the welfare statues need consideration; the rehabilitation of the sick Industry, as well as recovery of due provident fund.

6. This Court in Yeshwant Sahakari Kamgar Bank Ltd. (Not known as Brahmadev Dada Mane Sahakari Bank Limited) Vs. The Assistant Provident Fund Commr. Employees Provident Fund Organisation and The Union of India (UOI), , has condoned the delay by applying Section 14 of the Limitation Act by observing as under:

The Limitation Act is a general law laying general rules applicable to all the cases dealt with under the Limitation Act. But there may be instances of a special law of limitation laid down in other statutes, though such statues may not be dealing with the law of limitation. Considering the same, therefore, the provision of law under Rule 7 of the said Rules which have been enacted in exercise of powers conferred u/s 21(1) of the said Act, is to be construed as a special law of limitation in relation to the appeals filed under the said Act. Obviously, therefore, considering the provisions of Section 29(2) of the Limitation Act, the provisions of Section 14 of the Limitation Act would apply to the cases arising under the said Act also.

7. Admittedly, as the application under the Act, was rejected, the Petitioner, challenged both the orders. The Petitioner might not have challenged the basic order, had the application u/s 14B of the Act was allowed. The Appeal dated June 5, 2009 from the date of communication of rejection of Application dated March 25, 2009 was within 120 days may not be within first 60 days, in the present facts and circumstances of the case, is within limitation.

8. The statute provides various remedies. The Petitioner invoked one of it. The statutory Appeal so preferred after the rejection of application ought not have dismissed by overlooking the period so lost in persuading the first application, on waiver of damages under the Act. The grant of an opportunity to the Petitioner to contest the matter does not mean a decision on merits itself. There is nothing in the Act, to show that an independent Appeal should be filed against the order dated January 11, 2008 first and pending the Appeal only the Appellant need to

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apply u/s 14B of the Act. There is nothing to show or pointed out that if such Application, even if filed, the party needs to prefer an Appeal against the main order also. The party may or may not agitate and/or file two proceedings simultaneously. The period of pendency of bona fide application u/s 14B, is liable to be excluded in the present case.

9. In view of above, in the interest of justice as the Applicant has made out the case and the order so passed needs to be quashed and set aside. Resultantly, the impugned order dated November 11, 2009 is quashed and set aside. The Appellate Tribunal, New Delhi to hear the Case A.T.A. No. 341(9)/2009, by giving opportunity to both the parties on merits.

10. The petition is accordingly allowed. No order as to costs.

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