(2014) 09 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2608/2007

Regional Provident Fund Commissioner APPELLANT

Vs

Maharashtra Hybrid Seed Company Ltd. RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14B, 7A, 7i, 7I

Citation : (2014) 09 BOM CK 0040

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : R.S. Sundaram, Advocate for the Appellant

Judgement

R.K. Deshpande, J.—The challenge in this petition is to the order dated 15th April, 2005, passed by the Appellate Tribunal under Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as "the said Act") in Appeal No. ATA 306(9)/2005. The order under Section 14-B passed by the Commissioner imposes damages to the tune of Rs. 1,80,339/- for the delayed remittances of provident fund dues for the period from April 1993 to November 1996 was the subject matter of appeal. The Appellate Authority has reduced the damages to the extent of 50%. Hence, this writ petition by the Corporation.

2. Section 14-B of the said Act empowers the Commissioner of Provident Fund to recover from the employer by way of penalty, the damages not exceeding the amount of arrears as may be specified in the scheme, in the event the employer makes default in payment of any contribution to the fund. Para 32-A of the scheme is the table prescribing the period of default and the rate of damages. Undisputedly, the damages are calculated to the tune of Rs.1,80,339/- in terms of para 32-A of the scheme. Para 32-B empowers the Central Board to reduce or waive the damages levelled under Section 14-B of the said Act subject to the terms and conditions mentioned therein. Clause (c) in paragraph 32-B of the

scheme states that in other cases, depending on merits, reduction of damages up to 50% may be allowed. Thus, undisputedly, the Central Board has power to reduce or waive the damages to the extent of 50% depending upon the merits of the case.

3. Undisputedly , there is an appeal provided under Section 7i to the Appellate Tribunal even to challenge the order imposing recovery of damages under Section 14-B of the said Act read with Para 32-A and 32-B of the scheme. The Tribunal considering the merits of the matter has passed an order reducing the damages up to 50% in terms of clause (c) of paragraph 32-B of the Scheme. The Tribunal has all such powers to pass all such orders in appeal which can be passed by the Commissioner under Section 14 of the said Act read with paras 32-A and 32-B of the scheme if such case is made out or the legal considerations exists. The order passed by the Appellate Tribunal cannot, therefore, be said to be without jurisdiction. The Appellate Tribunal has also recorded the reason for reducing the damages. It has taken into consideration that the code number was issued on 02.12.1996 and the order under Section 7-A was passed on 31.03.1997. It is further held that even prior to issuance of coverage notice, the assessee started complying with the provisions of the Act in the month of November, 1995. Thus, the Appellate Tribunal has found the bonafides of the assessee and upon valid consideration, the reduction is made in accordance with clause (c) of paragraph 32-B of the scheme.

Hence, no interference is called for. The writ petition is dismissed.