(1993) 07 BOM CK 0055

In the Bombay High Court

R.M. Gandhi APPELLANT

Vs

K.T. Rolling Mills Pvt. Ltd. RESPONDENT

Date of Decision : 12-07-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (1994) 68 FLR 1149

Hon'ble Judges : Sujata V. Manohar, J;N.D. Vyas, J

Bench : Division Bench

Judgement

1. This is an appeal from a judgment of a learned single Judge dated 29th November, 1992 under which the learned single Judge has allowed the writ petition of the respondents herein and quashed notices initiating proceedings u/s 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 for the alleged failure of the respondents to pay contributions under the Act for the period July 1968 to October 1977. The notice was issued by the appellant to the respondents after 17 years from the first alleged default and 8 years from the last alleged default. The learned Judge, after examining a number of questions, has held that where no period of limitation is prescribed by law for the exercise of any power, it must be exercised within a reasonable time. Any unreasonable delay in exercise of a power may affect its validity. What is reasonable time, however, will depend upon the facts of each case. Having examined the circumstances of the case before him, the learned Judge has held that there was unreasonable delay in initiating action u/s 14-B and, hence, the action has vitiated.

2. We do not see any reason to differ from this position in law or to differ from the conclusion which the learned single Judge has arrived at on the facts of the case before us. Our attention, however, is drawn by Mr. Sethna, learned Advocate for the appellants, to the observations of the learned single Judge in paragraph 18 of his judgment in which he has made observation to the effect that ordinarily one year should be the uppermost limit for initiating proceedings

u/s 14-B. These observations have to be looked at in the context of the discussion of facts which were before the learned Judge. These observations cannot be understood as prescribing a period of limitation of one year for initiating action u/s 14-B. What the legislature has not done obviously cannot be done by the learned single Judge. The learned Judge has himself observed that whether there is any unreasonable delay in initiating action u/s 14-B will have to be judged depending upon the facts of each case. Therefore, the observations of the learned Judge in paragraph 18 will have to be read merely as passing observations. They cannot be considered as laying down a proposition of law that ordinarily a notice u/s 14-B cannot be initiated beyond one year of the default. We make it clear that the ratio of the impugned judgment is not to be found in paragraph 18 of the judgment but in paragraph 32 of the judgment where the learned Judge has clearly laid down the principles on which he has decided the matter before him. We are making this clarification because we are informed by the learned Advocate for the appellant that in some cases it has been urged that show cause notice cannot be issued u/s 14-B beyond a period of one year relying upon the observations of the learned Judge in paragraph 18 of his judgment. These observations do not lay down any such absolute proposition. The reasonableness or otherwise of the show cause notice will have to be judged in the light of relevant facts and circumstances of each case.

3. With the above clarification, the appeal is dismissed.

