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(2012) 09 DEL CK 0203

In the Delhi High Court

Case No : Writ Petition (C) 831 of 2012

Roma Henny Security Services Pvt. Ltd. — APPELLANT

Vs

Central Board of Trustees, E.P.F. Organization — RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:
Provident Funds Act, 1925 — Section 6, 7Q, 8, 8B, 8F

Citation : (2012) 10 AD 1 : (2012) 193 DLT 486 : (2012) 132 DRJ 753 : (2012) 135 FLR 799 : (2013) 1 ILR Delhi 190 : (2013) 1 LLJ 29 : (2013) 2 SCT 199

Hon'ble Judges : Rajiv Shakdher, J;Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Full Bench

Advocate : S.P. Arora, for the Appellant; Aparna Bhat, with Ms. Raj Kumari Banju, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. Vide orders dated 13.7.2012 the Division Bench referred the matter for determination of question of law, which arises in this petition, by a Larger Bench. The reason for reference of the matter to the Larger Bench was the judgment given by the earlier Division Bench in the case of M/S System and Stampings and Anr. Vs. Employees'' Provident Fund Appellate Tribunal and Ors. 2008 LLR 485. It was argued by the respondents that certain facts/provisions could not be pointed out to the Division Bench and had that position been there before the Court, it would have changed the direction of the judgment. The Division Bench felt that in case the stand of the respondent is accepted, that would result in taking contrary view to the view taken by the Division Bench in M/S System and Stampings (supra), and for this reason, it would be appropriate if the matter is referred to the Larger Bench for determination. The facts are stated in detail in the reference order dated 13.7.2012. However, for complete understanding of the issue at hand, it would be necessary to re-visit those facts and incorporate in the present order, which we now proceed to do. The petitioner is an establishment engaged in supplies of manpower for the purposes of security and

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surveillance to different establishments and is covered by the provisions of the PF Act. It is allotted Code Number DL-27506. It appears that the petitioner had not paid provident fund contribution and other contribution including administrative charges payable under different provisions of the said Act in time and because of this late payment the Assistant Provident Fund Commissioner initiated proceedings for recovery of damages u/s 14-B of the Act. These proceedings culminated in passing of order dated 26.11.2010 holding that the establishment had failed to pay, within prescribed time limit:-

(i) The Provident Fund contribution;

(ii) The Employees'' Pension contribution;

(iii) The Insurance Fund contribution; and

(iv) The Administrative charges For the period from 06/99 to 06/04, 03/05 to 05/05, 07/05 to 01/07, 05/07 to 08/08, 10/08, 10/08.

3. For this reason, damages in the sum of Rs. 7,10,989/- were imposed u/s 14-Bof the Act; details of which are as under:-

For the period from 06/99 to 06/04, 03/05 to 05/05, 07/05 to 08/08, 10/08, 10/08 totalling Rs. 710989/- be recovered as per the account wise schedule indicted below from the employer in relation to M/s Roma Henny Security Services Pvt. Ltd. bearing code No. DL/27506:

Nature of damages

Amount

Account No.

P.F. contributions

Rs. 165371/-

1

Administrative Charges

Rs. 60889/

2

FPF/EPS contributions

Rs. 456578/-

10

EDLI contributions

Rs. 27610/-

21

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EDLI administrative charges

Rs. 541/-

22

Total

Rs. 710989/-

(Rs. Seven Lac Ten Thousand Nine Hundred Eighty Nine only)

3. The order further indicated that the petitioner was also liable to remit a sum of Rs. 4,53,886/- towards interest payable u/s 7-Q of the PF Act @ 12% p.a. which provisions come into force vide notification dated 30.06.1997. The account wise detail of the amount payable towards Section 7Q of the PF Act was furnished as follows:-

Nature of interest

Amount

Account No.

P.F. contributions

Rs. 105249/-

1

Administrative charges

Rs. 38918/-

2

FPF/EPs contributions

Rs. 291705/-

10

EDLI contributions

Rs. 17654/-

21

EDLI administrative charges

Rs. 360/-

22

Total

Rs. 4,53,886/-

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The petitioner paid the amount of damages of Rs. 7,10,989/- vide cheque No. 632192 dated 28.12.2010. By a separate letter of even date, the petitioner disputed the liability of interest u/s 7-Q of the Act on the ground that this amount had already been included in the amount of damages calculated by the respondent. The respondent however, did not accept this plea and issued attachment orders u/s 8F of the PF Act and attached the current account of the petitioner and by this process recovered a sum of Rs. 4,53,886/- on 3.2.2011. The petitioner protested against this recovery vide his representation dated 12.2.2011 drawing the attention of the Division Bench judgment of this Court in the case of M/S System and Stampings (supra) which was upheld by the Supreme Court, as the SLP thereagainst was dismissed in limine. However, this did not have any effect on the respondent who made a further recovery of Rs. 13775.00 u/s 7-Q of the PF Act on account of late payment of Rs. 4,53,886.00. It is under these circumstances, the petitioner has preferred the instant petition.

4. From the aforesaid, it would be clear that the case of the petitioner is that once damages u/s 14-B of the Act are recovered, there cannot be any payment of interest u/s 7-Q of the Act as the interest component is already included in the damages imposed u/s 14-B of the Act. The challenge to recovery is thus, laid on the following basis:-

(a)The amount of interest payable u/s 7Q of the Act is already stand included in the slab in damages prescribed by the respondent u/s 14B of the PF Act as specifically held by this Court in M/s System and Stampings (supra).

(b)The respondent does not have any statutory power to charge and calculate any amount of interest u/s 7Q of the Act as the said section is not a charging section and there is no provision in the Act for recovery of the amount of interest calculated under this provision. It is submitted that provision of Section 8 and 8-B to 8-G relating to recovery do not provide for recovery by any throaty and charge u/s 7Q of the Act.

5. In support of the first proposition namely interest payable u/s 7-Q of the Act stands included in the slab in damages prescribed by the respondent u/s 14-B of the Act, Mr. Arora, learned counsel for the petitioner has relied upon M/S System and Stampings (supra) and in that case the Division Bench has referred to Office Memorandum dated 29.5.1990 which reads as under:-

Moreover, now that in the recent amendment to the Act, we have already provided for the payment of simple interest at 12% per annum (Section 7Q) payable from the date the amount has become due till the date it is actually paid, it had become necessary to revise the rates of damages and to specify the same in the scheme. Thus, a proposal to revise the rates of damages was accordingly placed before the Central Board of Trustees and the Board in its 119th meeting held on 4th April, 1989 approved the following revised rates of damages with the condition that the position with regard to the incidence of default following the revision of the rates of damages would be analysed after six

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months from the date the new rates come into force.

Period of Delay

Revised

Interest chargeable

Total

Existing

Rates of

under Section 7Q

rate of

Damages

damages

(i)2 months or less

5

12

17

25

(ii)Over 2

months but

10

12

22

25

less than 4 months

(iii) over 4 months but less than 6 months

15

12

27

25

(iv)Over 6

months

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25

12

37

25

6. From the aforesaid the Division Bench concluded that the rates of damages were revised payable u/s 14 B of the PF Act by including the payment of simple interest @ 12 p.a. payable u/s 7-Qof the PF Act. On that basis, the Court held that no additional interest u/s 7Q of the PF Act was payable once the damages were paid u/s 14B of the Act. The contention of the Provident Fund Department to the contrary was turned down observing as under:-

6. The circular dated 29.5.1990 provides that all defaulters thereafter shall be liable to pay interest at the rate specified in column 1, that is, from 5 to 25 per cent depending upon the period of default as damages u/s 14B of the Act. The defaulters in addition are liable to pay interest chargeable u/s 7Q of the Act at the rate of 12 per cent per annum as mentioned in the 2nd column. The rates mentioned in column 3 of the circular is the sum total of column Nos. 1 and 2. The total amount varies between 17 to 37 per cent per annum depending upon the period of default. Thus, for default of less than two months, the defaulter becomes liable to pay damages at the rate of 5 per cent per annum u/s 14B and also interest u/s 7Q of the Act at the rate of 12 per cent per annum. Therefore, the defaulter becomes liable to pay damages u/s 14B and interest u/s 7Q at the rate of 17 per cent per annum. This is less than the original rate of damages of 25 per cent per annum as it existed before the circular dated 29.5.1990 was issued. Similarly, for defaults between two months less than four months the defaulter becomes liable to pay damages at the rate of 10 per cent per annum u/s 14B and interest at the rate of 12 per cent per annum u/s 7Q after 1.7.1997 or 22 per cent in all. For defaults of more than four months but less than six months each defaulter becomes liable to pay interest and damages at the rate of 27 per cent per annum and in defaults of over six months interest and damages at the rate of 37 percent per annum. Thus for defaults beyond 4 months the amount payable increased from the flat rate of 25% per annum.

7. The stand of the respondent, however, is that even after 1.7.1997 the defaulter is liable to pay "Total" mentioned in column 3 as well as interest at the rate of 12 per cent per annum u/s 7Q of the Act or 29%, 34%, 39% and 49% for the respective periods of default. This stand of the respondents cannot be accepted as it is contrary to their own circular dated 29.5.1990. As per the respondent, defaulter will be made to pay interest u/s 7Q at the rate of 12 per cent even when he has paid damages as per the rate mentioned in column 3 which includes interest u/s 7Q. Thus, he will pay interest u/s 7Q twice. It is clear from the circular that once interest is chargeable u/s 7Q of the Act, the defaulter should be asked to pay damages as per the percentage specified in column 1, that is, between 5 to 25 per cent per annum depending upon the period of

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default. The third column mentions the total of the revised rate of damages and interest chargeable u/s 7Q. Column 3 cannot be regarded as rate of damages after 1.7.1997, when interest became payable u/s 7Q of the Act.

7. It is an admitted case that SLP was filed against this order and the Supreme Court dismissed the same on the ground of limitation as well as on merits vide order dated 16.7.2009.

8. Mr. Arora also referred to the judgment of the Supreme Court in Organo Chemical Industries and Anr. Vs. Union of India and Ors. AIR 1979 SC 1803. In that case the vires of Section 14-B of the Act was challenged, inter alia, on the ground that Section 14-B of the Act was unbridled and unguided power to the authority to impose damages and in the absence of guidelines in the provision, it was arbitrary in nature. It was also argued that though the purpose behind this provision was to impose damages which is compensatory in character and could not exceed the interest on the amount defaulted during the period of delay. But the respondents had gone beyond the mere quantum of interest and were levying/imposing damages making it penal in character. Rejecting these contentions, the Court took the view that "damages" as imposed by Section 14-B of the Act included a punitive sum as well. Submission of Mr. Arora was that while explaining the expression "damages" contemplated u/s 14-B of the Act, the Court made it clear that there was a twin purpose behind Section 14-Bof the Act namely to impose penalty as well as provide compensation for the employees by claiming interest. He thus submitted that this judgment is an indicator that provisions of Section 14-B of the Act include interest element as well. Specific reference was made to the following observations in this behalf:-

The expression ''damages'' occurring in Section 14Bis, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/s 14B is not merely to provide compensation for the employees''. We are clearly of the opinion that the imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Schemes. The word ''damages'' in Section 14B is related to the word ''default''. The words used in Section 14B are ''default in the payment of contribution'' and, therefore, the word ''default'' must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word ''default'' in Section 14B must mean ''failure in performance'',or ''failure to act.'' At the same time; the imposition of damages u/s 14B is to provide reparation for the amount of loss suffered by the employees.

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9. The argument of learned counsel for the respondent, on the other hand, was same which was before the Division Bench and noted in order dated 13.7.2012. To recapitulate, it was argued that Section 7Q of the PF Act was introduced in the year 1997 which prescribes payment of interest on the late damages of the provident contribution. It was argued that unlike Section 14B of the PF Act which provides for damages, this provision is compensatory in nature and there is no need to provide any adjudication or give any hearing. The legislative intent was that as soon as any amount becomes due, interest will accumulate automatically till such time the amount is paid. The submission was that insofar as judgment in M/s System and Stamping (supra) is concerned, the subsequent circulars were not taken into account which would have clarified the position and resulting into different consequences. Explaining the circumstances in which the office memorandum (taken note of by the Court in the aforesaid judgment) was issued, the respondent states that a proposal was forwarded from the Central Provident Fund Commissioner proposing certain modifications in Section 14B of the PF Act more particularly in relation to the rates of damages prescribed under para 32A of the scheme. This was a mere proposal which was apparently also accepted by the Board of Trustees but it was not accepted by the Ministry as amendments to the law was not made in line with the proposal. At that time, neither para 32 as mentioned in paragraph 6 hereinabove nor section 7Q had come into force though it was introduced. Section 7-Qof the Act was made effective only in July 1997. That in 1997 by virtue of an amendment in the law, section 7Q got introduced. She referred to the clarificatory Circular dated 12.9.1997 precisely on this aspect which made it abundantly clear that provisions of Section 7-Q of the Act were different from Section 14-Band the table stipulating the damages for default did not include interest element. She also submitted that the observations of the Supreme Court in Organo Chemicals Industries & Anr. (supra), as relied upon by the petitioner, were totally out of context, insofar as present case is concerned and were of no avail to the petitioner.

10. We have deliberated upon the aforesaid submission of counsel on either side.

11. It is not in dispute that if the judgment of M/s System and Stamping (supra) is to be followed, the case is covered in favour of the petitioner. However, we find substance in the submission of learned counsel for the respondent that in the said judgment the Division Bench entirely rest upon the Office Memorandum dated 29.5.1990 on the basis of which the Bench came to the conclusion that interest element chargeable u/s 7-Q of the Act was included in the table prescribing damages payable u/s 14-Bof the Act. As we will demonstrate hereinafter, there were various other subsequent Circulars which were not taken into account. In the first instance, it needs to be pointed out that the Office Memorandum referred to by the Division Bench was dated 29.5.1990. It was issued at the time when Section 7-Q was not made effective. Pertinently, this provision was introduced in the Act in the year 1988 but was made effective only from 1.7.1997. Since the provision was not in force as on 29.5.1990, it appears that by that mechanism which was applied administratively was to include the

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component of interest while imposing the damages u/s 14-B of the Act. However, the position changed after Section 7-Q of the Act was in force w.e.f. 1.7.1997. The interest on delayed contribution of provident fund became payable statutorily. While this was so, the aforesaid table continued to operate which has now been modified and replaced by the another table made effective from 26.9.2008 and the rates of damages as per the revised table are as under:-

Sl. No.

Period of default

Rate of damages (Effective 26.9.2008)

1.

Less than two months (upto 59 days)

5%

2.

Two months and above but less than four months (upto 119 days)

10%

3.

Four months and above but less than Six Months (upto 179 days)

15%

4.

Six months and above (180 days and above)

25%

12. It is clear from the above that w.e.f. 26.9.2008 the damages u/s 14-B of the Act are charged on the aforesaid basis which would show, for example if the period of default is less than two months, the damages payable are 5%. However, the table which was governing upto this date and is noted in the judgment of M/s System and Stamping (supra), the damages for the period of default of less than two months were 17%. Same is the position in respect of other periods of default when the two tables are kept in juxtaposition it would clearly revealed that the damages are now reduced by 12% at every stage meaning thereby component of interest u/s 7-Q is now removed. The comparison of the aforesaid two would show that upto 26.9.2008 the earlier table continue to govern which included the element of interest u/s 7-Q of the Act. From 26.9.2008 onwards, however the two are segregated. This would clearly bolster the stand of the petitioner that if the earlier table is applied which was so done, interest payable u/s 7-Q of the Act was already included.

13. In the present case, the period for which damages u/s 14-B of the Act are

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levied is from June, 1999 to October, 2008. Therefore, for almost the entire period interest stands charged by imposing damages u/s 14-B of the Act with the application of rates mentioned in the table prevailing prior to 26.9.2008. It is not the case of the Department that for one month i.e. 27.9.2008 to October, 2008 damages were charged on the rates specified in the new table. When the matter is examined from this angle also we find substance in the argument of the learned counsel for the petitioner that the clarification issued by the Department that interest is to be charged separately would be of no avail. Of course, that may be the legal position. However, the mechanism to charge interest separately was not enforced by modifying the existing table which step was taken only in issuing fresh table making effective from 26.9.2008.

14. We are therefore of the opinion that in M/s System and Stamping (supra) the Division Bench took the correct view that damages u/s 14-B of the Act were inclusive of interest chargeable u/s 7-Q of the Act as the present case covers that very period, the respondent had no right to charge the interest u/s 7-Q of the Act additionally when it already stood payable in the order passed u/s 14-B of the Act. As the petition succeeds on this ground itself, it may not be necessary to go into the other issues raised by the petitioner.

15. We accordingly set aside the order dated 26.11.2010 insofar as it directs payment of interest u/s 7-Q of the Act in the sum of Rs. 4,53,886/- in addition to the damages payable u/s 14B of the Act which was levied to the tune of Rs. 7,10,989/- as the interest payable u/s 7-Q of the Act was already included therein. Since this amount was wrongly recovered from the petitioner on 3.2.2011, the PF Department is directed to refund that amount of Rs. 4,53,886/- alongwith interest @12% to be calculated till the date of payment. No order as to costs.

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