(2004) 03 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 14187 of 2003

Sunrex Electronics APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:
Industrial Disputes Act, 1947 — Section 7A

Citation : (2004) 03 GUJ CK 0095

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Prabhakar Upadyay in Special Civil application No. 14187 of 2003, for the Appellant; P.J. Mehta, for Respondent Nos. 1-2 in Special Civil Application No. 14187 of 2003, for the Respondent

Judgement

Jayant Patel, J.—Rule. Mr. Mehta waives service of notice of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner challenging the legality and validity of the order dated 26.12.2001 passed u/s 7A read with the order dated 13.2.2003 passed in review application by respondent No.2.

3. Heard Mr. Upadhyay for the petitioner and Mr. Mehta for the respondent Nos. 1 & 2.

4. It appears that the case of the petitioner is that since 1992 the unit is closed, and as per the petitioner, all the workmen who were working are retrenched from service after paying the necessary dues and as per the petitioner the intimation for the same is also given to Factory Inspector, Central Excise Department, Sales Tax Department etc. However, it appears that the intimation is not given to the Provident Fund Authority nor the requisite form or declaration is filed by the petitioner to the Provident Fund Authority. Since, as per the record of the provident fund authority, after 1992, there was no contribution of provident fund,

the notice came to be issued u/s 7A. It is the case of the petitioner that the petitioner did not receive any intimation since the factory premises was closed, whereas, Mr. Mehta, the learned counsel appearing for the respondent Nos. 1 & 2 submitted that the intimation was sent by registered post AD and the provident fund authority has also received the acknowledgment receipt and thereafter, since nobody appeared on behalf of the petitioner, the authority has passed the order u/s 7A. Mr. Mehta submitted that review application was beyond time limit and therefore the same has been rejected.

5. There is no dispute on the point that against both the impugned orders the appeal is competent before the Tribunal, however, the presiding officer of the Tribunal is not available, and as a result thereof, the present petition.

6. It appears that if the case of the petitioner ultimately established that the unit is closed since 1992, the question of provident fund contribution may not arise. However, the fact remains that the petitioner has not intimated to the provident fund authority and therefore it will be for the petitioner to establish before the provident fund authority that the unit is genuinely closed and it is not a matter where a transfer has taken place in a sham and bogus manner namely that one unit is closed and at the same place the another unit has started by the same person under the name and style of different firm. It will also be for the provident fund authority to have the actual inspection of the premises if required, regarding the functioning and/or closure of the unit of the petitioner and whether the same is closed since 1992 or otherwise. As, such inquiry has not taken place, and therefore, I find that if the matter is reconsidered by the provident fund authority, the same would meet the ends of justice.

7. Further, at the same time, the petitioner cannot get away from the default of not representing the case in time before the provident fund authority. If a party who has not remained present, subsequently challenges the same, such conduct of the said party cannot be viewed by the Court leniently otherwise it would result into allowing the party to have the premium of his own default. Therefore, the petitioner has to bear the cost for default in participating in the proceedings and also for the present litigation. I would have examined the matter further, however, Mr. Upadhyay, the learned counsel appearing for the petitioner submitted that the petitioner would be agreeable to pay the cost and is ready to deposit 25% of the ordered amount subject to the outcome of the proceedings before the provident fund commissioner, if ultimately the matter is reconsidered.

8. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:-

(i) The petitioner shall deposit 25% of the ordered amount within a period of six weeks from today and shall also pay the cost of Rs.5000 as compensation for default and of this litigation to Respondent Provident Fund authority.

(ii) After the amount is deposited, the matter shall be reconsidered by the respondent No.2 on the basis of the review application submitted in Form No.9

and the respondent No.2 shall hold necessary inquiry in this regard and shall decide the matter after giving opportunity of hearing to the petitioner keeping in view the observations made by this Court hereinabove. The aforesaid exercise shall be completed as early as possible, preferably within a period of three months from the deposit of the said amount.

(iii) In view of the aforesaid directions given for reconsideration of the matter, the order dated 26.12.2001 as well as the order dated 13.2.2003 shall not remain under operation. However, if there is failure to deposit the amount as indicated earlier by the petitioner within stipulated time limit, the order shall operate and the matter will not be required to be reconsidered.

9. The petition is disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent with cost as quantified in aforesaid direction.

