(2008) 01 DEL CK 0183

In the Delhi High Court

Case No : L.P.A. No''s. 562-63 of 2006

Systems and Stamping and Another — APPELLANT

Vs

Employees'' Provident Fund Appellate Tribunal and Others — RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7Q

Citation : (2008) 2 LLJ 939

Hon'ble Judges : Dr. M.K. Sharma, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Harvinder Singh and S.K. Gupta, for the Appellant; R.C. Chawla and S. Hashmi, for the Respondent

Judgement

Mukundakam Sharma, C.J.—The present appeals are directed against the judgment dated January 10,2006 by which the learned single Judge has dismissed the Writ Petition (Civil) No. 20999-21000/2005. The said writ petitions were filed by the appellant impugning the order dated February 23, 2001 passed by the Regional Provident Fund Commissioner, Kanpur levying the penalty u/s 14-B of Employees Provident Fund Miscellaneous Provisions Act, 1952 (hereinafter referred to as an "Act").

The appeal against the said order was also dismissed by the appellate authority by its order dated September 7, 2005.

2. Short issue raised by the appellant is regarding quantum of penalty imposed u/s 14-B of the Act. The appellant admits defaults in payment of employees Provident Fund during the period December 1989 to February 2000. The period of default in each case varies and we are not required to go into this aspect. The only issue that arises for consideration is the quantum of damages payable u/s 14B of the Act in terms of Office Memorandum dated May 29, 1990, the relevant portion of 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 April 4, 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 months from the date the new rates come into force:

Interest Period of Delay (Revised Rates chargeable Total Existing rate of of Damages u/s damages 7-Q (i) 2 months or less 5 12 17 25 (ii) Over 2 months but less than 4 months 10 12 22 25

(iii) Over 4 months but less than 6 months 15 12 27 25

(iv) Over 6 months 25 12 37 25

3. Counsel for the parties agree that, for the period up to July 1, 1997 the appellants will be liable to pay penalty/damages u/s 14B of the Act on the total amount mentioned in column 3 under the heading Total. The reason for the same is that though Section 7-Q was introduced in the Act in 1988, it was made effective only from July 1, 1997.

4. the dispute relates to the period after July 1, 1997 and whether the percentage mentioned in column 1 "damages" is payable or the percentage mentioned under column 3 under the head "Total" is payable u/s 14-B of the Act.

5. The aforesaid circular was issued with a view to rationalise penalty/damages which was being levied u/s 14-B of the Act. In para 1 of the circular it is specifically mentioned that imposition of damages at a flat rate of 25% per annum even in cases of default of less than 4 months was considered to be exorbitant .It was also noticed that the existing rate of damages as a flat rate of 25% per annum did not make any distinction between occasional or defaults for short period and defaults by chronic or habitual defaulter and for longer periods.

6. The circular dated May 29, 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 14-B of the Act. The defaulters in addition are liable to pay interest chargeable u/s 7-Q 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 14-B and also interest u/s 7-Q of the Act at the rate of 12 per cent per annum. Therefore, the defaulter becomes liable to pay damages u/s 14-B and interest u/s 7-Q 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 May 29, 1990 was issued. Similarly, for defaults between two months and less than four months the defaulter becomes liable to pay damages at the rate of 10 per cent per annum u/s 14-B and interest at the rate of 12 per cent per annum; u/s 7-Q after July 1, 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 per cent 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 July 1, 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% & 49% for the respective periods of default. This stand of the respondents cannot be accepted as it is contrary to their own circular dated May 29, 1990. As per the respondent defaulter will be made to pay interest u/s 7-Q at the rate of 12 percent even when he has paid damages as per the rate mentioned in column 3 which includes interest u/s 7-Q. Thus he will pay interest u/s 7-Q twice. It is clear from the circular that once interest is chargeable u/s 7-Q 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 annum depending upon the period of default. The third column mentions the total of the revised rate of damages and interest chargeable u/s 7-Q. Column 3 cannot be regarded as rate of damages after July 1, 1997, when interest became payable u/s 7-Q of the Act.

8. Accordingly, we partly allow the present appeals with the direction to the Regional Provident Funds Commissioner to calculate the amount payable by the appellants for various periods of default in terms of the office memorandum dated May 29, 1990 as has been explained above. The appeal is accordingly disposed of. No order as to the costs.