(2012) 08 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No''s. 10011 and 10237 of 2011 (O and M)

The Service Club — APPELLANT

Vs

Presiding Officer and Another — RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions (Amendment) Act, 1988 — Section 7(A)

Citation : (2013) 1 SCT 433

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Vivek Salathia, for the Appellant; B.R. Rattan, Advocate for the Respondent No. 2, for the Respondent

Judgement

Rajesh Bindal, J.—This order will dispose of above-mentioned two petitions bearing C.W.P. Nos. 10011 and 10237 of 2011, as common questions of law and facts are involved. In both the petitions, the petitioner is Service Club, Amritsar. The prayer is for quashing the assessment orders dated 11.2.2003 and 21.10.2003 passed by Assistant Provident Fund Commissioner (for short, ''the Commissioner'') and orders dated 19.5.2010, passed by Presiding Officer, Employees Provident Fund Appellate Tribunal (for short, ''the Tribunal''), upholding the orders of assessment.

2. Learned counsel for the petitioner briefly referring to the facts of the case, namely, that assessment of the provident fund dues of the petitioner for the period from January, 1998 to March, 2001 and April, 2001 to June, 2003 was made by the Commissioner vide orders dated 11.2.2003 and 21.10.2003, respectively. The orders were impugned before the Tribunal. The appeals have been dismissed. It is not disputed that in proceedings before the Commissioner, the petitioner remained unrepresented and the assessment of provident fund dues was made on the basis of the dues assessed for the month of December, 1997. Learned counsel further submitted that the entire amount assessed by the

Commissioner has already been deposited. While placing reliance upon Ramala Sahkari Chini Mills Ltd. Vs. Employees'' Provident Fund Appellate Tribunal and Others, and H.P. State Forest Corporation Vs. Regional Provident Fund Commissioner, the submission is that unless the beneficiaries are identified, the amount of provident fund cannot be recovered. The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, ''the Act'') is meant for the benefit of the employees. Unless the beneficiaries are identified, the amount recovered from the petitioner will not be credited to any of the employees'' accounts, rather, the same will go to the coffers of the employees'' provident fund organization, where already crores of rupees is lying unclaimed, which is against the scheme of the Act.

3. He further submitted that the reason for petitioner''s non-representation before the Commissioner was that during the period in question, proceedings had been initiated against the petitioner for demolition of the building, from where it is operating. The Club is in existence from British time. It is operating from a heritage building. In fact, after December, 1997, the activities in the Club had been reduced considerably. They were not employing employees as were in service in December, 1997. He further submitted that once the amount assessed by the Commissioner has already been paid, the petitioner be given opportunity to produce its record so that appropriate assessment could be made and the amount, which already stands deposited, is credited to the accounts of the employees, who are entitled to it and for whose benefit the Act has been enacted. The balance, if any, be adjusted for the period subsequent thereto.

4. On the other hand, learned counsel for respondent No. 2 submitted that it is a case where numerous opportunities were granted to the petitioner, but it failed to avail of the same by producing the relevant record during the course of assessment proceedings. In fact, the petitioner is a covered establishment since April, 1989 and had been depositing the dues till December, 1997, but all of a sudden, it stopped compliance, hence, assessment was required to be made. Once the records were not produced despite grant of opportunities, the Commissioner had no other option but to assess the same on the basis of the record for the previous period. He further submitted that for the current period, the petitioner is depositing provident fund dues of employees, which is even much more than for which the assessment has been made for the period in question. In fact, the Club is a big establishment.

5. Heard learned counsel for the parties and perused the paper book.

6. The only issue sought to be raised by the petitioner is that it be granted an opportunity to produce the record so that beneficiaries could be identified and the amount already deposited by the petitioner be credited to their accounts and the excess, if any, be refunded or adjusted for future liability. The submission is that on account of certain unavoidable circumstances, the petitioner could neither deposit provident fund dues for the period nor could appear during the assessment proceedings. The Act has been enacted for the benefit of the

employees. The provident fund organization is merely a trustee of the money belonging to the employees. It is not a kind of tax. The amount recovered or to be recovered from an establishment has direct relation with the amount to be credited in the account of a beneficiary except the damages imposed. Unless the beneficiary is identified, the amount will remain in suspense account with no claimant. Already crores of rupees are lying with provident fund organization, which is unclaimed.

7. The issue regarding identification of the beneficiaries was considered by Hon''ble the Supreme Court in Food Corporation of India Vs. Provident Fund Commissioner and Others, In the aforesaid case, Hon''ble the Supreme Court observed that the question in such cases is not whether one has failed to produce evidence, rather, the question is whether the Commissioner, who is the statutory authority, has exercised the power vested in him to collect the relevant evidence before determining the amount payable under the Act. While referring to the provisions of Section 7(A) of the Act and the scope of enquiry, it was observed as under:

7. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract question of law, but only to determine actual concrete difference in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It will be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

8. Similar issue came up for consideration before Hon''ble the Supreme Court in Ramala Sahkari Chini Mills Ltd.''s case (supra), where also, after setting aside the order passed by the authorities, the matter was remitted back for fresh consideration.

9. In Himachal Pradesh State Forest Corporation''s case (supra), the order passed by the Tribunal to the following effect was upheld by Hon''ble the Supreme Court with slight modification, which is extracted below:

In view of the above discussions, the appeal is fit to be partly allowed and the case to be remanded back for re-determination of the dues with reference to the identifiable employees only. The appellant cannot be pressed to produce such records which under any Statute they are not made liable to maintain or which they are authorized to destroy because of expiry date. The appellants are directed to produce all the records in their possession for the disputed period and explain satisfactorily for those which they cannot produce. Contractors may be summoned if the appellant make a prayer for that and give full details. However, it is the appellant''s liability to maintain the records and produce them as held by the Hon''ble Supreme Court.

The operative part of the order passed by Hon''ble the Supreme Court in the aforesaid case is extracted below:

5. We have heard the learned counsel for the parties and gone through the record. We do appreciate that the inaction on the part of the Commissioner to initiate proceedings within a reasonable time, has to be deplored. However, as the Corporation has itself submitted that it was covered under the Act and in view of the limited relief granted by the authorities below and by the High Court, we are disinclined to interfere with the matter at this stage. We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference be drawn on this score. With this very small modification, we dismiss the appeals.

10. While assessing the amount of provident fund dues against the petitioner, all what has been relied upon by the Commissioner was the dues for the month of December, 1997. On the basis thereof, the dues for the period from January, 1998 to March, 2001 and April, 2001 to June, 2003 were assessed, vide two separate orders. No doubt, the petitioner in the present case has failed to avail of the opportunities afforded to it during the proceedings u/s 7(A) of the Act, but the fact remains that unless the beneficiaries are identified, the amount deposited with Provident Fund Department will not be of any use to the employees for whose benefit the Trust has been created. The case of the petitioner is that during the period in question, the employees employed by it were less than the number in December, 1997. Even if it furnishes the information on the statutory forms regarding the details of the employees working during that period, the amount in excess will remain with the Commissioner which will not be credited to the account of any of the employee. In view of my aforesaid discussion, the impugned orders passed by the Commissioner as well as the Tribunal are quashed and the petitioner is afforded an opportunity to produce the record before the Commissioner pertaining to the number of employees working during the period in question, who were entitled to be covered under the provisions of the Act so that they are identified and the amount already deposited or which may further be required to be deposited, is credited in their accounts. However, it is made clear that in case lesser amount is assessed, the amount already deposited by the petitioner shall be adjusted against future liability. Since the petitioner in the present case is at fault in not availing of the opportunities afforded to it during the course of proceedings u/s 7(A) of the Act, it is burdened with costs of Rs. 15,000/- each in both the petitions, which is to be deposited by it by way of cheque/demand draft with the Commissioner, before whom representative of the petitioner will appear for further proceedings on 21.9.2012.

The petitions stand disposed of.