(2010) 09 GUJ CK 0130

In the Gujarat High Court

Case No : Special Civil Application No. 8976 of 1990

Zaverchand Marketing Ltd. APPELLANT

Vs

Regional P.F. Commissioner and Another RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 6

Citation : (2010) 09 GUJ CK 0130

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Jigar Patel and K.M. Patel, for the Appellant; P.M. Raval, for Respondents 1-2 and Niral R. Mehta, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Though this matter is not pertained to this Court as per the present roster, this matter is placed as per the order of Hon''ble the Chief Justice.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the direction to the petitioner to pay Provident Fund contribution @ 10% from June, 1984 under the amended provisions of Section 6 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (''the Act'' for short).

3. In brief, the facts are that the petitioner, an independent establishment incorporated under the Bombay Shops and Establishments Act, 1948 on 13-2-1981, was engaged in the marketing of engineering goods. There were 32 employees working in the petitioner Company and their service conditions are regulated by biparte settlement. They are not subjected to transfer to M/s Zaverchand Gaekwad (P) Ltd. It was a factory under the Factories Act, 1948 and was licensed under the Sales Tax and assessed under the Income Tax Act. The petitioner was allotted separate code number for remittance of provident fund contribution payable to its employees upon its request and it had been paying

the contribution regularly under the Act. As per the amended provisions of Section 6 of the Act by Amending Act No. 33 of 1988 with effect from 1-8-1989, rate of employers'' contribution and employees'' contribution was revised from 8.1/3% to 10% for notified establishments wherein 50 employees are employed. Although the petitioner was not covered under the amended provisions since it employed only 32 employees, the respondents vide letter dated 20-6-1990 directed the petitioner to pay employees contribution at enhanced rate. Even after the request was made by the petitioner by way of representation for personal hearing, it was informed by the respondents vide letter dated 15-10-1990 that as the petitioner was not an independent establishment, combined strength of the employees would be taken into account for deciding the employees contribution. Hence, the present petition.

4. Heard learned Counsel for the respective parties.

5. It is to be noted that as per the notification issued by the Central Government, rate of Provident Fund contribution payable by the employers and employees was raised to 10% from 8.1/3% for establishments which have employed more than 50 employees. As per the say of the learned Counsel for the petitioner, the petitioner employed only 32 employees and it has no connection with M/s Zaverchand Gaekwad (P) Ltd. and it is separate and independent. According to the petitioner, there is no financial, managerial or functional integrity between the two establishments. Further, the employees are not transferable from one establishment to the other. The aforesaid contention has not been accepted by the respondents on the ground that the respondents while allotting the code number specifically intimated the petitioner that it was a marketing branch of M/s Zaverchand Gaekwad (P) Ltd. and it would deposit the amount of employees contribution regularly.

7. Having accepted the same and having started depositing employees'' contribution long back without challenging the contention at any point of time, it would not lie in the mouth of the petitioner to content that it is an independent and separate entity when it was asked to deposit the amount at the enhanced rate as per the amended provisions of Section 6 of the Act by Amending Act No. 33 of 1988 with effect from 1-8-1989. Apart from that, it appears from Annexure-E page 27 of the petition that the communication was addressed by the respondent Regional Provident Fund Commissioner to M/s Zaverchand Gaekwad Pvt. Ltd. intimating that their marketing unit namely, M/s Zaverchand Marketing Ltd., the petitioner herein, was allotted code number for depositing employees contribution. This clearly shows that the petitioner is a branch of M/s Zaverchand Gaekwad (P) Ltd. and hence, combined strength of employees would have to be taken into account. Thus, taking into the account the combined strength of employees, the petitioner would be liable to deposit the contribution at the enhanced rate of 10%. Since there is no substance in the petition, it is liable to be dismissed. This petition is dismissed. Notice is discharged. Interim relief stands vacated.

