

MANU/MH/0812/2015

Equivalent Citation: [2015(145)FLR465], (2015)IILLJ664Bom, 2015LLR495, 2015(4)SCT45(Bombay)

IN THE HIGH COURT OF BOMBAY

OOCJ W.P. No. 886/2011

Decided On: 13.01.2015

Appellants: **Ray Engineering Limited**
Vs.

Respondent: **Employees' Provident Fund Organisation and Ors.**

Hon'ble Judges/Coram:

R.G. Ketkar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.C. Naidu i/b C.R. Naidu & Co., Advocates

For Respondents/Defendant: Suresh Kumar, Advocate

ORDER

R.G. Ketkar, J.

1. Heard Mr. Naidu, learned Counsel for the petitioner, Mr. Suresh Kumar, learned Counsel for respondent No. 1 and Mr. Karnik, learned Counsel for respondent No. 3. On the motion made by Mr. Naidu, respondent No. 2 is deleted as no reliefs are claimed against respondent No. 2 being a formal party. Leave to amend so as to delete respondent No. 2 is granted. Amendment shall be carried out forthwith Since the amendment is of formal nature, affirmation in support thereof is dispensed with. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 25.1.2011 passed by the Regional Provident Fund Commissioner-I, Regional Office, Mumbai-II. By that order, relaxation order dated 10.1.2008 was withdrawn on the ground that the petitioner violated conditions No. 11, 12, 13, 21 and 22 of that Relaxation Order and conditions No. 5, 6, 16 and 17 of the conditions notified by the Government of India vide notification No. GSR. 853 dated 29.10.2003.

2. In support of this Petition, Mr. Naidu invited my attention to order dated 17.11.2006 passed by the Income-tax Officer (Tech)-10, Mumbai. Under Rule 3(1) of Part-A of the Fourth Schedule to the Income Tax Act, 1961, recognition was accorded to the petitioner's Employees' Provident Fund Trust with effect from 22.9.2006. Mr. Naidu submitted that the petitioner made application for registration as also for exemption under Section 17(1)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'Act'). On 5.3.2007, the Regional Provident Fund Commissioner, Maharashtra S.A.O. Thane allotted Code No. M.H./THN/200491 and directed the petitioner to implement the provisions of the Act with effect from 1.11.2006. Mr. Naidu submitted that on 10.1.2008, relaxation under Paragraph-79 of the Employees' Provident Fund Scheme-1952 (for short 'Scheme') was granted. He submitted that S/Shri R.S. Tambe and V.M. Sawankar. Enforcement Officers visited the establishment on 24.11.2009 and 10.12.2009 and noted the

compliance as also made observations. On 9.12.2010, show-cause notice was issued to the petitioner, which was duly replied on 14.12.2010

3. Mr. Naidu invited my attention to the various payments made by the petitioner on-

"a. 20.1.2009 for the year 2007-2008 towards penal damages to the tune of Rs. 2,372 in respect of Accounts No. 2, 10 and 21;

b. 20.12.2009 for the year 2007-2008 towards miscellaneous payments under section 7Q to the tune of Rs. 5,912 in respect of Accounts No. 2, 10, 21 and 22;

c. 14.3.2009 for the year 2007-2008 towards penal damages to the tune of Rs. 5,419 in respect of Accounts No. 2, 10, 21 and 22;

d. 20.1.2009 for the year 2008-2009 towards penal damages to the tune of Rs. 2,378 in respect of Accounts No. 2, 10 and 21;

e. 20.1.2009 for the year 2008-2009 towards miscellaneous payments under Section 7Q to the tune of Rs. 5,499 in respect of Accounts No. 2, 10, 21 and 22; and

f. 4.12.2010 for the year 2009-2010 towards penal damages and miscellaneous payments under Section 7Q to the tune of Rs. 5,699 in respect of Accounts No, 2, 10. 21 and 22."

He submitted that by the impugned order, relaxation is withdrawn on the ground that the petitioner has violated conditions No. (xi), (xii), (xiii), (xxi) and (xxii) of the Relaxation Order dated 10.1.2008.

4. Mr. Naidu submitted that condition No. (xi) is equivalent to condition No. 24(b); condition No, (xii) is equivalent to condition No. 5, condition No. (xiii) is equivalent to condition No. 17; condition No. (xxi) is equivalent to condition No. 6; and condition No. (xxii) is equivalent to condition No. 16 of Appendix -A to paragraph 27 AA of the Scheme. He submitted that in case of violation of condition No. 17, the Board of Trustees are separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative. in case of violation of condition No. 5, the employer is liable to pay simple interest @12% in terms of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees. He submitted that the interest is payable by the employer and not by the trustees. He submitted that the petitioner on his own volition has deposited the diverse amounts indicated hereinabove. While passing the impugned order, the Regional Provident Fund Commissioner-I, Regional Office, Mumbai-II has not taken into consideration various payments made by the petitioner. That apart, on 25.1.2008, Regional Provident Fund Commissioner-I, Regional Office, Mumbai-II recommended case of the petitioner for granting exemption under Section 17(1)(a) of the Act to the Central Provident Fund Commissioner. Even this aspect is not considered while passing the impugned order.

5. Mr. Suresh Kumar submitted that the petitioner has admitted violation of condition No. (xii). He invited my attention to paragraph 2 of reply dated 14.12.2010, which is to the following effect:

"(2) Remittance:-Due to rapid progress of our establishment within 4 years,

some time we faced this problem but we have calculated on our own damages interest on delayed remittance and paid upto 2009-10. We are now regular in remittance and we assure you that we will be regular in future also."

6. On this count alone, the authority concerned was justified in withdrawing the relaxation order.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As indicated earlier, while passing the impugned order, the concerned authority has not taken into account various payments made by the petitioner as also the fact that on 25.1.2008, recommendation is made by the Regional Provident Fund Commissioner, Maharashtra S.A.O., Thane to the Central Provident Fund Commissioner. The authority also before taking drastic decision of withdrawing relaxation should have considered whether this was a fit case for imposing penalty prescribed under conditions No. 5 and 17 of Appendix A of paragraph 27-AA of the Scheme Since these aspects are not considered by the authority concerned, the impugned order deserves to be quashed and set aside. In view thereof, Petition succeeds. The impugned order is set aside and the matter is remitted to the Regional Provident Fund Commissioner-I, Regional Office, Mumbai-II for considering the case afresh and after hearing the parties, pass appropriate order in accordance with law. All the contentions on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

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