Engser Ltd. and anr. Vs. Employees Provident Fund Organisation and ors.

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Court : Kolkata

Decided On : Jan-17-2007

Reported in : (2007)2CALLT650(HC),[2007(115)FLR1104]

Judge : Jayanta Kumar Biswas, J.

Acts : Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Sections 7A, 7B, 7Q and 71

Appeal No. : W.P. No. 2184 of 2005

Appellant : Engser Ltd. and anr.

Respondent : Employees Provident Fund Organisation and ors.

Disposition : Application allowed

Judgement :

Jayanta Kumar Biswas, J.

1. The writ petitioners are questioning the order of the Assistant Provident Fund Commissioner, Sub-Regional Office, Howrah dated September 12th, 2005 directing them to pay the sum of Rs.2,64,922/- on account of interest payable under Section 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

2. The order dated September 12th, 2005 is set out below:

It is observed from office record that you have made payment of PF and allied dues for the period from 7/97-9/02 after expiry of the stipulated date. Therefore the following interest has been charged for that delay payment:

Interest under Section 7Q

Period A/C. 1 A/C. 2 A/C. 10 A/C. 21 A/C. 22 Total7/97-9/02 134914 10612 112789 6483 124 264922 Rupees Two lakh sixty four thousand nine hundred and twenty two only.

You are directed to make payment forthwith of this demand failing which legal action will be initiated against you.

3. Feeling aggrieved the petitioners took out writ petition. They had no remedy of statutory appeal, since provisions in Section 71 did not permit an appeal against an order made under Section 7Q. They did not have the remedy of review as well, since an order made under Section 7Q could not be reviewed by the authority in terms of provisions in Section 7B. They approached the writ Court contending that the order was issued arbitrarily, since they had never been given any opportunity of showing cause and hearing.

4. Their counsel submits that without following the principles of natural justice the authority ought not to have made the order in September, 2005 demanding interest for belated deposit of contributions during the period from July 1997 to September 2002. Counsel for the respondents submits that while making the order under Section 7Q, the authority was under no obligation to give opportunity to the petitioners of showing cause and hearing. His contention is that the order under Section 7Q was to be made as a matter of course, since admittedly the petitioners had deposited the contributions belatedly.

5. He cites to me a single bench unreported decision of this Court dated April 21st, 2005 given in Capri Home Products Ltd. and Anr. v. The Regional Provident Fund Commissioner and Anr. and submits that as was held in that case, while making an order under Section 7Q the authority was not required to give any opportunity

of hearing to the establishment. He says that details of the calculation determining the amount payable on account of interest would appear from the sheets supplied to him by his client, and that he is also in a position to supply them to counsel for the petitioners.

6. I am of the view that the authority did not act fairly in the matter. True it is that provisions in Section 7Q did not provide for an opportunity of showing cause and hearing. But, in my view, such opportunity is necessary, when the authority makes an independent order under that section, that is to say, when the order under Section 7Q is not made at the time of making an order determining the liability of the employer under any other provision of the Act. For example, if an order under Section 7Q is made while making an order under Section 7A determining the liability of the establishment, the authority is not required to give an independent opportunity of showing cause and hearing to the establishment, since such opportunities are to be given to the establishment in the process of making the principal order under Section 7A.

7. The authority cited to me does not apply to the present case for the reason that the order under Section 7Q was not made independently; there a composite order was made under Section 7A read with Section 7Q, and needless to say that the establishment concerned had reasonable opportunity of making submission regarding its liability determined under both the sections. That is not the case here; here the order under Section 7Q was made as an independent order alleging default in payment sometime in the past. In my opinion, in such a case as this absence of an opportunity of showing cause and hearing is bound to cause grave injustice and prejudice to the establishment. There was no valid ground on which the authority could conclusively presume that during a period in the past (not recent past, here eight to three years ago from the date of the order) the establishment had committed defaults in depositing the statutory contributions.

8. The basis on which the authority made the allegations needed disclosure, and rule of fairness entitled the establishment to get an opportunity to deal with the allegations. It is only after establishing the allegations as correct that the authority could have imposed interest by making order under Section 7Q (after calling upon

the establishment to submit objection, if any, regarding the calculation determining the amount of interest). It was not at all a matter of course, as contended by counsel for the authority. The amount was to be realised in exercise of statutory power, it would have been payable only after liability of the employer was fixed. In my view, the authority just arbitrarily demanded the amount without saying how the liability had been fixed, and how the amounts had been determined. I have no hesitation in holding that the order has caused grave and serious injustice to the petitioners.

9. For these reasons, I set aside the impugned order dated September 12th, 2005 and allow the writ petition to this extent. The authority shall give a fresh decision under Section 7Q. Initiating the proceedings, the authority shall issue the show-cause notice giving necessary particulars (to the reasonable extent) about the belated deposit of contributions. The petitioners shall be given an opportunity of submitting objection. Then the authority shall give the petitioners an opportunity of hearing. If any interest is to be charged, then the calculation sheets with the proposed amounts of interest shall be supplied inviting objection, if any, from the petitioners. Thereafter the final decision under Section 7Q shall be given after hearing the petitioners on the question of calculation and determination of the amount of interest payable. Till the fresh decision is given, the bank guarantee already given by the petitioners shall remain in force. The petitioners shall renew the bank guarantee for the period that may be indicated by the authority in the show-cause notice. The entire exercise shall be completed within eight weeks from the date of communication of this order. There shall be no order for costs.

Urgent xerox certified copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.