BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-2/14/2024

M/s. Knit Craft Apparels International Pvt. Ltd.

…Appellant

Through:- Sh. S.K. Gupta and Sh. Raj Kumar, Ld. Counsels for the appellant.

Vs.

RPFC, Gurugram (East)

…Respondent

Through:- Sh. S.N. Mahanta, Ld. Counsel and Sh. Lalit Kumar, AR for the respondent.

Order Dated:-.2026

The appellant, an establishment covered under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act'),** has assailed the orders passed under section 14-B and Section 7-Q dated 08.11.2023 of the Act, whereby the respondent assessed the damages and interest to the tune of Rs. 7,47,076/- and Rs. 7,88,265/- respectively, for the period from 08/2013 to 02/2020, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

The appellant has challenged the impugned orders on several grounds, inter alia, that the respondent failed to consider the oral submissions and objections raised by the appellant during the proceedings under Section 14B of the Act; the respondent, while passing the impugned orders, was required to apply its judicial mind to consider and analyse the facts; the impugned orders passed by the respondent are perverse and contrary to the provisions of the Act; the respondent did not exercise its discretion while considering the mitigating factors;

and the respondent acted in a dual capacity, both as prosecutor and judge, which is against the principles of natural justice. Moreover, it is alleged that the appellant was not given a reasonable opportunity of representing its case before the respondent, which is mandatory under Sections 14B and 7Q of the Act. In fact, the appellant establishment had been facing financial difficulties, which were not considered by the respondent.

The respondent filed a reply to the appeal, raising several preliminary objections, stating that the appeal under Section 7Q of the Act is not maintainable. It was further stated that the appellant was duty-bound to comply with the provisions of the Act and was required to pay the employees' contributions by the 15th of the following month but failed to do so; the orders were passed strictly in accordance with the provisions of the Act; and both proceedings were held together as the parties in both matters were the same. The appellant establishment miserably failed to demonstrate the mitigating circumstances which prevented it from depositing the PF contributions within the prescribed time period, and the delay was wilful. Therefore, nothing survives in the appeal, and the same is liable to be dismissed.

The appellant filed a rejoinder denying whatever had been stated by respondent in its reply.

I have heard the arguments presented by both parties and perused the records of the appeal. Before proceeding further, section 14B and 7Q of the Act are required to be reproduced herein:

> ***14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund 3[, the 2[Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 4[or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 6[the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the***

> ***Official Gazette, in this behalf] may recover 7[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] 8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 9 [Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.]***
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> ***7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]***

The argument of the appellant rests on the premise that the authority has violated its own circular issued on 20.08.1990, whereby the respondent department itself had emphasized that all cases under section 14B have to be finalised within a period of three years. It is further submitted that the department didn't give the appellant the benefit of the Covid-19 pandemic period, and the department had not considered mitigating circumstances that it had been facing financial difficulty. For this, the appellant relied upon Annexure A-5 of the appeal to show that the appellant was facing financial difficulties and was compelled to sell Industrial Plot Nos. 490 and 491 (measuring 4522.50 sq. mtrs.).

As far as the first argument of the appellant that the department violated its own circular dated 20.08.1990 is concerned, the same does have merit. There is no quarrel that the said circular has been issued and it still not has been withdrawn by the department. In the said circular, it *has been emphasized that all cases under Section 14B have to be finalised within a period of three years. It is further stated that the cases in which the damages were yet to be levied as on 30.06.1990, the RPFC should ensure that all such cases are disposed of within a period of three years, and in case of fresh defaults, damages shall be levied within the close of three financial years. While the respondent's stand is that the said circular is advisory in nature, however it mandates the respondent to limit itself to levying damages for three years. The respondent has further countered the argument stating that financial difficulty is not a ground for reducing the damages. So far so Covid-19 pandemic is concerned, the respondent's stand is that the alleged period doesn't fall within the Covid-19 pandemic period. In the present appeal, a notice dated 06.12.2021 was issued for the levy of damages for the period from 24.08.2013 to 29.02.2020. Therefore, the arguments of the respondent in this regard is not tenable.*

In these circumstances, the notice issued for levying damages and interest for a period of nine years is unsustainable, unreasonable and liable to be set aside for the wage months 04/2012 to 11/2018.

So far so the second leg of arguments advanced the counsel for the appellant that the department did not give the appellant the benefit of the Covid-19 pandemic period is concerned, the same is misconceived. The department levied damages and interest for the delayed period relating to the wage months up to 08/2019. The Covid-19 pandemic had not commenced by then. Therefore, the argument advanced by the learned counsel for the appellant is devoid of merit.

The third leg of arguments of the Ld. Counsel for the appellant is also bereft of merit. The appellant has not placed on record any balance-sheet showing financial loss or that it had borrowed any money during the relevant period. Merely selling the industrial land in question in the year 2023 does not, by itself, establish that the appellant had been facing financial difficulties during the period for which the damages were levied.

In view of the above discussion, the appeal stands partly allowed. The appellant is directed to deposit the damages levied for the wage months 12/2018 to 08/2019 as mentioned in annexure 'A' of the notice dated 06/12/2021 within one month from the date of this order along with the interest amount of Rs. 7,88,265/- under section 7Q of the Act. The Authorized Representative for the respondent is directed to collect LCR from the registry of this Tribunal. Office is directed to send the copy of this order to both the parties through email. The records of the appeal is consigned to the record room.

Atul Kumar Garg
(Presiding Officer)