

I. L. R. Punjab and Haryana

(1968)1

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*M/S PIONEER SPORTS WORKS PRIVATE LIMITED,—*Petitioner.**versus*THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 1379 of 1964.

March 27, 1967.

Employees Provident Funds Act (XIX of 1952)—Ss. 8 and 14-B—Non-payment of employer's contribution of pre-discovery period—Damages—When leviable—No demand for employer's contribution for a few years—Whether deemed to be waived.

Held, that damages cannot be levied under section 14-B of the Employees Provident Funds Act, 1952 on failure of the employer to pay contributions of the pre-discovery period, unless omission is wilful and deliberate. If the contribution of such period was made at the time when it was doubtful whether in respect of that period contribution could be levied, the levy of damages is unlawful and unjustifiable.

Held, that merely because no demand for employer's contribution was made for a few years under section 8 of the Employees Provident Funds Act, 1952, the demand cannot be deemed to have been waived.

(Note.—Letters Patent Appeal from the order (L.P.A. No. 192 of 1967) was dismissed in limine on July 27, 1967—Editor).

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued directing the respondents to forbear from enforcing the order conveyed in PFA-3/174/29356, dated Chandigarh the 18th June, 1963.

A. S. SARHADI, ADVOCATE, for the Petitioner.

CHETAN DAS DEWAN, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

M/s. Pioneer Sports Works, Private, Limited *v.* The Punjab State and others (Shamsher Bahadur, J.)

ORDER

SHAMSHER BAHADUR, J.—The petitioner, M/s. Pioneer Sports Works Private Limited (hereinafter called the company) has invoked the jurisdiction of this Court under Article 226 of the Constitution to enforce refund of certain payments made by it to the second respondent, Regional Provident Fund Commissioner, Punjab and Himachal Pradesh and also to restrain this functionary from recovering the sum of Rs. 401.20 as damages. The amount actually paid by the petitioner to the second respondent as contributions to provident fund is Rs. 5,500 odd.

The company claims to be small scale cottage industry for the manufacture of sports goods and is operating from Jullundur City since the partition. The company was informed by the Regional Provident Fund Commissioner, second respondent, on 5th of February, 1962, that it had employed 50 persons on 31st August, 1961, and has become liable to make contributions in accordance with the scheme appended with the Employees' Provident Funds Act, 1952, (hereinafter called the Act). The company was informed that it was liable to make contributions with effect from 1st September, 1961. On account of the late discovery that the company was covered by the Employees Provident Fund Scheme, a concession was made that for the pre-discovery period from 1st September, 1961 to 31st January, 1962, contributions may be made by instalments only with respect to the employers' share under the scheme. It was, however, mentioned specifically in this letter that the company "had already rendered" itself liable for damages under section 14-B of the Act.

It is not disputed that the company made the payments of the contributions of employer's share in accordance with the concession allowed to them in respect of the pre-discovery period. The amount of payment so made approximates Rs. 5,500.

It is submitted on behalf of Mr. Sarhadi that in view of the recent decision of a Division Bench of this Court he is no longer in a position to press for the recovery of the amount which has already been paid in respect of the employers' contributions to the scheme. This decision of Chief Justice Falshaw and Grover J. in *Kapur Bhimber Union and Regional Provident Fund Commissioner* (1), made it clear that the liability to contribute to the fund started on 1st of November, 1952 when the Act came into force, and the employer and the eligible employees have to make contributions to the fund from that date.

(1) (1966) 1 L.L.J. 870.

Merely because no demand for contribution was made for a few years, the demand cannot be deemed to have been waived. On this authority it is rightly submitted by the learned Deputy Advocate-General, appearing for the Regional Provident Fund Commissioner, that the demand could be made for payment for pre-discovery period if the company had been in operation as indeed it was. All that Mr. Sarhadi contends is that till the decision was given by the Division Bench in *Kapur Bhimber Union's* case, the matter was doubtful. He does not press for the recovery of this amount any longer.

Mr. Sarhadi, however submits that the demand for damages is not warranted by the provisions of section 14-B of the Act which says that :—

“Where an employer makes default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or in the payment of any charges payable under any other provision of this Act or of any Scheme or under any of the conditions specified under section 17, the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears, as it may think fit to impose.”

While the second respondent had allowed the petitioner to clear the arrears of provident fund contribution due for the period October, 1961 to January, 1962, in four equal monthly instalments, it was made clear that the extension would not affect his right to claim damages under section 14-B. The second respondent had taken the view that the petitioner had committed default in making the contributions with respect to September, 1961 to January, 1962, and for the first time a levy of damages under section 14-B was made on 14th August, 1962 when Annexure D was sent to the company. It was mentioned in this letter that the charges in respect of the company for the period September, 1961 to November, 1961, had not been paid in time and, therefore, damages were imposed at the rate of 5 to 15 per cent. The total amount computed as damages for these three months is, Rs. 378.50 and Rs. 22.70 (total Rs. 401.20). No damages for December, 1961 to January, 1962, have yet been computed and it was mentioned in Annexure D that these would be intimated “to you in due course”. Mr. Sarhadi strongly contends that the contribution having been paid, though not without demur, when asked for, no question of any default arose. It was doubtful at the time when the payment was made whether in respect of the pre-discovery period

The Oriental Carpet Manufactures (India), Private Ltd., v. The Commissioner of
Wealth Tax, Punjab, (Pandit, J.)

contributions could be levied and there are decisions of some Courts which support him. It is only because of the decision of this Court given in *Kapur Bhimber Union's* case that Mr. Sarhadi in the course of arguments has abandoned the claim in respect of the amount paid on account of the pre-discovery period. It was for the first time on 14th August, 1962, that damages were levied and it is to be borne in mind that this was when the amount on account of contributions had actually been paid. It is argued by Mr. Sarhadi that no damages could have been levied in respect of non-payment of a sum which had already been paid. It is urged by Mr. Sarhadi that the failure to pay contributions must be wilful and deliberate before damages could be levied under section 14-B. The company though under protest made the payment within the period specified in the notice demanding payment of contributions. It is worthy of note that the petitioner was given some concession in making the payment for the contributions in respect of the pre-discovery period. In the circumstances, it seems to me that the levy of damages is unlawful and unjustifiable.

I would accordingly allow this petition to the extent that the sum of Rs. 401.20 demanded from the petitioner as damages will not be recovered. The demand of damages, for December, 1961 and January, 1962, which is yet to be made, will consequently not be pressed. As the petitioner has only partially succeeded, there would be no order as to costs of this petition.

R. N. M.

INCOME TAX REFERENCE

Before A. N. Grover and Prem Chand Pandit, JJ.

THE ORIENTAL CARPET MANUFACTURES (INDIA) PRIVATE LTD.—

Petitioner

versus

THE COMMISSIONER OF WEALTH TAX, PUNJAB,—*Respondent.*

Income Tax Reference No. 6 of 1963.

March 28, 1967

Wealth Tax Act (XXVII of 1957)—S. 45(d)—Company established in 1924 starting new section in August, 1955—Whether entitled to five years tax holiday—Interpretation of Statutes—Words of statute clear—Whether must be given effect to—Report of Select Committee and debates in Parliament—Whether can be referred to ascertain the intention of the legislature.