

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-  
II, ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

M/s. Ghatak Security Services

Appellant

Vs.

RPFC/APFC, Noida

Respondent

**ATA No. D-2/19/2021**

**ORDER DATED:- 13.09.2021**

Present:- Shri Ravi Ranjan & Shri Vikas Singh, Ld. Counsel for the Appellant.  
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount, as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the petition being served on the respondent, learned counsel Sh. S. N. Mahanta appeared and participated in the hearing held on 26/8/2021 through video conferencing, though no written objection was filed. Perusal of the office note reveals that the impugned order u/s 7A was passed on 26.2.21.by the APFC, Noida and was communicated to the

establishment on the same day. But the appeal has been filed on 16.8.21 i.e beyond the prescribed period of limitation. The appellant has taken the stand that the Hon'ble SC on considering the difficulty faced by the litigants in approaching the courts and tribunals for the on going COVID 19 pandemic have passed order in suo motto WPC No 03 / 2020 extending the period of limitation until further order. Hence, the delay in filing the appeal be condoned. The learned counsel representing the respondent fairly conceded to the submission for condonation of delay on account of the extension granted by the Hon'ble SC. Hence the delay that occurred in filing the appeal stands condoned.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed defying the principles of natural justice. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was initially with regard to few complaints made by ex employees, to whom allegedly the benefits were not extended. The commissioner then converted the inquiry to find out less deposit of PF contribution by the employer for the period 8/13 to 11/19. For doing so he solely relied upon the report of the EO, which was never supplied to the appellant despite written request for the same. More over the appellant during the inquiry had made a

written request for summoning the complainant so that the establishment could have availed the opportunity of cross examining the said complainants. But the commissioner exercising the quasi judicial power having authority of summoning persons and documents for the purpose of the inquiry, considering the submission made by the establishment and without application of mind passed he impugned order. He took into consideration the report of the EO only .he also submitted that during the inquiry the statement of the complainants were also filed wherein they have stated that the dues payable by the establishment has already been paid by the establishment and they have no grievance against the establishment. Such an important document was not considered by the commissioner. Not only that the stand of the establishment that it had closed it's business since April 2019 and no employee between April 2019 to Nov 2019 was not considered too. The entire determination being illegal is liable to be setaside. The amount so determined is not payable to any one as the beneficiaries have not been identified. He thus argued for admission of the appeal waiving the condition of deposit contemplated u/s 70 of the Act. On behalf of the appellant reliance has also been placed in the case of M/S Faze 3 Ltd vs. EPFO decided by the Hon'ble High Court of Gujarat to submit that the commissioner can not pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the E O only without providing due opportunity to the establishment of perusing the said report and

cross examining the person who prepared the report. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time when it's business has been stopped. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. Learned counsel Mr. Mahanta also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd VS RPFC, to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act. He also submitted that due consideration was given to the submission made by the appellant during inquiry.

The commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the prayer for summoning the complainants and supply of the EO Report giving an opportunity to the appellant of cross examination. In this regard reliance can be placed in the case of **Small Gauges Ltd &Others VS V P Ramlal APFC** decided

by the Hon'ble High Court of Bombay, wherein it has been held that unless the documents ,deposition, and calculation forming basis of the order are made available to the establishment, it can not be said that the basic tenets of the principle of *audialterampartem* was followed.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 8/13 to 11/19 and the amount assessed is 6,69,133/-.There is no mention in the order about the basis of the calculation arrived at .Without going to the other details pointed out by the appellant challenging the order as arbitrary, and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to pass an order keeping in view the principle decided in the case of Small Gaudge Ltd referred supra ,as well as considering the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration. Thus it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 20%.

Accordingly ,the appellant is directed to deposit 20% of the assessed amount within 4 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the tribunal with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. List the matter on 25/10/2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Presiding Officer