

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

M/S. Dar Al Handasah Consultants,
(Shair and Partners) India Pvt. Ltd.,
Wing A & B, Level 2, Tower 11,
Cybercity, Magarpatta City,
Pune – 411 013.

- APPELLANT

V/s.

1. Employees' Provident Fund Organisation,
Regional Office: Cantonment Board Building,
Golibar Maidan, Pune – 411 001.

2. Regional Provident Fund Commissioner – II,
Employees' Provident Fund Organisation,
Regional Office: Cantonment Board Building,
Golibar Maidan, Pune – 411 001.

- RESPONDENTS

ORDER

Dated:02.03.2023

Present: Shri Neil Hildreth, Advocate with Shri Banuprakash Nagaraj,
Advocate for the appellant.

Mr. Rakesh Sawant, Advocate for the respondents.

The present appeal under Section 7-I of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, [herein after referred to as 'the Act'] is directed against the order dated 30.12.2022 passed by respondent No.2 under Section 7A of the Act.

Along with the appeal, there is also an application for waiver under Section 7-O of the Act. There is also an application for stay of the impugned order.

Shri Rakesh Sawant, Advocate, has put in appearance on behalf of the respondents and he has filed his Vakalatnama and written submissions to the applications for waiver and stay.

As per the impugned order, the amount assessed is Rs.2,75,19,243/-.

I have heard the learned counsel for the parties and perused the case file carefully.

The learned counsel for the appellant, inter alia, contended that respondent No.2, while passing the impugned order, has wrongly taken into

consideration the amount of gratuity, leave encashment, performance bonus, holiday allowance etc. paid to the employees as qualifying for contribution to the EPF. He further contended that as per the judgment of the Hon'ble Supreme Court rendered in Manipal Academy of Higher Education V/s. Provident Fund Commissioner, reported as AIR 2008 SC Page 1951, basic wage was never intended to include amounts received for leave encashment. He further contended that similar to leave encashment, gratuity paid at the time of cessation of employment is also not liable to EPF deduction because the gratuity amount is entirely paid by the employer. He further contended that while passing the impugned order, respondent No.2 has taken into consideration the period from April 2016 to June 2019 as a default period towards EPF contribution. He further contended that the contribution towards EPF made by the appellant from July 2019 onwards has been approved by respondent No.2. He submitted that even from July 2019 onwards, the appellant had not made any contribution towards EPF on the amounts paid to its employees towards gratuity, leave encashment etc. and, thus, he argued that the impugned order ordering recovery of the amount under the said heads is, prima facie, illegal.

The learned counsel further submitted that respondent No.2 has failed to consider that certain employees, list of whom was placed on record before respondent No.2, who had joined after April 2016 and had resigned before June 2019, were not subject to deduction of EPF contribution for the whole period but respondent No.2, by a sweeping observation, ordered recovery for the whole of the said period which is wrong and illegal. Hence, he argued that the impugned order is illegal and erroneous on the face of the record and there is total non application of mind by respondent No.2 and, therefore, he prayed that the applications for waiver and stay may be allowed.

However, he offered to deposit some amount.

On the other hand, learned counsel for the respondents resisted the said contentions and supported the impugned order primarily on the grounds which prevailed with respondent No.2. However, he could not elaborate as to how leave encashment and gratuity amount was liable to EPF deduction.

After hearing both the sides, I am of the considered opinion that there is force in the contentions raised on behalf of the appellant and there are arguable points in the appeal. There is, prima facie, no justification for respondent No.2 to hold that leave encashment and gratuity was liable to EPF deductions. Also, the fact that certain employees had joined after April 2016 and resigned before June 2019, was not adverted to by respondent No.2.

Considering the totality of the facts and circumstances of the case and the contentions raised by the learned counsel for the appellant, it is ordered that the appellant shall deposit 50% of the assessed amount with respondent No.2 within three weeks from today and recovery of the remaining 50% of the assessed amount shall remain stayed during pendency of the present appeal. The application for waiver as well as the application for stay stand accordingly, disposed of.

Needless to say that if the appeal is eventually allowed, the appellant shall be entitled to the refund.

It is made clear that in case, the said 50% amount is not deposited within the aforesaid stipulated time, the stay order shall stand vacated automatically and the entire amount shall become recoverable.

Now to come on 06.06.2023 for reply to the appeal.

Sd/-

March 02, 2023

(LAXMI NARAIN JINDAL)
Presiding Officer
CGIT -2, Mumbai