

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

M/S. Fosma Maritime Institute and Research Organisation,
102 A, Fulcrum, Sahar Road, Andheri East,
Mumbai – 400 099.

- APPELLANT

V/s.

Employees' Provident Fund Organisation,
341, Bhavishyanidhi Bhavan,
Bandra (East), Mumbai – 400 051.

Assistant Provident Fund Commissioner
EPFO, 341, Bhavishyanidhi Bhavan,
Bandra (East), Mumbai – 400 051.

- RESPONDENTS

ORDER

Dated:23.01.2023

Present: Shri B.D. Birajdar, Advocate for the appellant.

Ms. Ranjana Todankar, Advocate for the respondents.

Memo of appearance on behalf of the respondents filed by Ms. Ranjana Todankar, Advocate.

The present appeal is under Section 7-I of the EPF & MP Act, 1952 against the orders under Sections 14B and 7Q of the Act passed by the respondents.

The amount of penalty assessed under Section 14B is Rs.83,20,795/- and the amount assessed under Section 7Q is Rs.30,82,868/-.

Heard on the application for stay of operation of the impugned orders.

The learned counsel for the appellant, inter alia, submits that the impugned orders suffer from patent illegality and to buttress his contention, he

referred to the grounds of appeal. Thus, he argued that during pendency of the present appeal, operation of the impugned orders may be stayed.

On the other hand, learned counsel for the respondents resisted the said contentions and submitted that reasoned orders have been passed after affording due opportunity to the appellant and the same are legal and valid. She also submitted that the impugned order under Section 7Q of the Act is not appealable and appeal against the same is not maintainable. Thus, she argued that no ground for stay is made out.

After hearing both the sides and going through the case file carefully, I am of the considered opinion that there are arguable points in the appeal. The impugned order under Section 14B is dated 31.10.2022 and the impugned order under Section 7Q is a follow up of the first order under Section 14B of the Act and, thus, though separate orders have been passed by respondent No.2 but, in effect, the second order under Section 7Q of the Act is a follow up of the first order. In *Arcot Textile Mills Ltd. V/s. Regional Provident Fund Commissioner*, reported in (2013) 16 SCC 1, it was held by the Hon'ble Supreme Court that though, no appeal under Section 7-I of the Act is available against an order passed under Section 7Q thereof but, however, if the order under Section 7Q levying interest is not an independent order and is an order passed along with an order under Section 14B of the Act, the same should be construed as a composite order which would be amenable to appeal under Section 7-I of the said Act.

Therefore, in the present case, in view of the above factual and legal position, the present appeal against both the impugned orders shall be, prima facie, maintainable.

Thus, keeping in view the facts and circumstances of the case, it is ordered that the appellant shall deposit 50% of the amount of Rs.83,20,795/- as assessed under Section 14B of the Act, and 50% of the amount of Rs.30,82,868/- as assessed under Section 7Q of the Act, with the respondents within three weeks from today. The recovery of the remaining 50% of the said amount shall remain stayed till decision of the present appeal.

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

Thus, the application for stay accordingly stands disposed of.

To come up on 05.06.2023 for filing reply by the respondents.

January 23, 2023

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