

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI**

M/S. Sankalp Winery Pvt. Ltd.,  
NASHIK – 422 305.

- APPELLANT

V/s.

Assistant Provident Fund Commissioner  
NASHIK – 422 007.

- RESPONDENT

**ORDER**

Dated:28.02.2023

Present: Shri S.S. Jape, Advocate for the appellant.  
Mrs. Kashmira Vashi Sawant, Advocate for the respondent.

The present appeal is pending for 11.04.2023.

An application has been filed by the appellant for taking up the matter on today's board with advance notice to the respondent.

In response to the advance notice, Mrs. Kashmira Vashi Sawant, Advocate, has appeared for the respondent and filed her appearance.

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 01.12.2022 passed by the respondent under Section 14B of the Act.

Along with the appeal, there is also an application for condonation of delay. In the said application, it is averred that date of the impugned order as 01.12.2022 is wrongly recorded and in fact, date of the impugned order is 09.01.2023 and the same was despatched on 10.01.2023 and received by the appellant on 13.01.2023. Thus, it is alleged that the present appeal having been filed on 06.02.2023 is within limitation.

On the other hand, learned counsel for the respondent does not wish to file any reply to the said application.

After hearing both the side, I am of the considered opinion that the said application deserves to be allowed. As per the postal receipt placed on the file by the appellant, the impugned order was despatched on 10.01.2023 from the office of the respondent. It is a fact that the order dated 01.12.2022 was not pronounced in open Court. Therefore, the date of receipt of the impugned order, which is 13.01.2023, is to be taken into consideration and reckoned

from 13.01.2023, the appeal is within limitation. Thus, the said application for condonation of delay is accordingly allowed.

There is also an application for stay of the impugned order.

As per the impugned order, the amount of penalty under Section 14B of the Act is Rs.9,46,746/-.

The learned counsel for the appellant submits that the impugned order is illegal and unsustainable in the eye of law because the procedure as envisaged under the Code of Civil Procedure was not followed and no opportunity to cross examine the witnesses was given. He also submits that the impugned order is not a speaking one. He also submits that nonetheless, the appellant offers to deposit some amount as assessed under Section 14B of the Act. Thus, he prays that operation of impugned order may be stayed subject to deposit of some amount by the appellant.

On the other hand, learned counsel for the respondent resisted the said contentions and submitted that reasoned order has been passed after affording due opportunity to the appellant and the same is legal and valid. 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.

Keeping in view the facts and circumstances of the case, it is ordered that the appellant shall deposit 50% of the amount of Rs.9,46,746/- as assessed under Section 14B of the Act with the respondent 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 and the entire amount shall become recoverable.

Thus, the application for stay accordingly stands disposed of.

To come up on 11.04.2023, for reply and filing Vakalatnama on behalf of the respondent.

February 28, 2023

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