

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

APPEAL NO. CGIT- 2 / EPFA53/2020

M/s. Livewell Aviation Services.

- Appellant

V/s.

Regional Provident Fund Commissioner,

EPFO, Bandra.

- Respondent

ORDER

(Delivered on 18-02-2025)

M/s. Livewell Aviation Services/appellant-applicant has challenged the legality of order dated 31.01.2020 passed u/s. 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short,"EPF Act") in the present appeal and by this application the applicant prays for waiver from pre-deposit of 75% amount and in an appeal memo itself prays for stay to the effect and operation of the order under appeal during pendency of lis.

2. The applicant is rendering services in connection with Airport and allied activities not in scheduled activity, started rendering compliances under EPF and meticulously making compliance to the fund without deficiencies. Due to Global Recession suffered economic crises continuously and thereby defaulted in monthly Provident Fund Contribution during March 2016 to December 2018 therefore the opponent invoked the powers u/s. 14-B and 7-Q of the EPF Act. The opponent issued summons and ignoring written as well as oral submissions, levied the damages illogically and illegally u/s. 14-B of the EPF Act by an order on 31.01.2020. The order

under appeal is not reasoned nor speaking and the penal damages are levied mechanically. The whole enquiry was conducted in violations of the principles of natural Justice, thus the applicant urged that, if the waiver is not granted it will be double jeopardy thus prayed accordingly.

3. The opponent resisted the application by reply. The opponent contended that, the applicant has employed trained professionals, ground staff engineers and customers representative of 35 Airlines. The applicant was served with the summons u/s. 14-B & 7-Q of the EPF Act and order u/s. 14-B & 7-Q came to be passed 31.12.2020 for the period from 01.03.2016 to 31.12.2018 and thereby levied an amount of Rs.4,57,081/- towards damages and Rs.3,20,801/- towards interest that too after giving sufficient opportunity thus, there is no illegality in the order under appeal and ultimately prayed for rejection of the application.

4. It will not be out of place to mention here that, the provisions of the Sec.7-O of the EPF Act is applicable only to the determination of amount by an officer referred in Sec.7-A of the EPF Act and not for determination of damages u/s. 14-B of the EPF Act, therefore there is no question of direction to the applicant to deposit the amount of 75% as per Sec. 7-O of the EPF Act.

5. Undisputedly, for the belated remittance of monthly Provident Fund contribution for the period from March 2016 to December 2018, enquiry was initiated against the applicant. It is the case of the applicant that, during enquiry initiated for assessment of damages reasonable opportunity was not given to him, no mitigating circumstances were considered by the Authority, guidelines laid down by the Authority as per letter dated 24.10.1975 were also not

considered. The Authority ought to have considered financial constraints which were beyond control therefore required to be reduced, however the same has not been done and also ignored various decisions of the Superior Courts. There was non-application of mind and the order under appeal is a non-speaking and non-reasoned order.

6. It is clear that, the grounds raised by the applicant in an appeal are arguable points and certainly requires to be considered while deciding the appeal on merit, therefore there is no hesitation to accept that, the applicant has made out a strong prima-facie case, considering the other facts and circumstance of the case, the balance and convenience lies in favor of the applicant and as regards the comparative hardship, the applicant is entitled for interim stay to the order under appeal.

7. The learned counsel for the opponent submitted that, while granting stay to the order under appeal, the applicant must be directed to deposit some amount of the amount assessed in the order under appeal and for that she relied the decision of **M/s. Chempaka Kindergarten v/s. Assistant Provident Fund Commissioner 2015 SCC Online Kerala 13454.**

8. On careful perusal of the decision relied on behalf of the opponent in which the Hon'ble Lordship directed that, the demand with respect to Sec.14-B of the EPF Act shall be kept in abeyance till the interim application in the appeal or appeal itself dis-considered therefore while granting stay, the court directed the parties deposit some amount due as per the EPF Act. In view of the decision of the Kerala High Court and more particularly in the light of fact that, the applicant has already deposited the whole amount of interest

assessed in the order u/s. 7-Q, I am directing the applicant to deposit 10% of amount as assessed towards damages within a period of 04 weeks from the date of this order.

In the result, the application is allowed. The effect and operation of the order under appeal is stayed till the disposal of the appeal on merit only on depositing 10% of assessed amount towards damages within a period of 04 weeks from the date of this order.

Sd/-

Date: 18-02-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai