

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM
No. 208 ROUSE
AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Present:

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

M/s RBS Services India Private Ltd;

Appellant.

Vs.

RPFC, Gurugram.

Respondent.

Appeal No. D-2/25/2021

Order dated 9th November, 2021

Present: Sh. Sanjay Ghose, Ld. Counsel for the Appellant.
Sh. B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission 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.

A caveat petition was filed by the Respondent in the matter before filing of the appeal. Copy of the petitions being served on the respondent, learned counsel for the respondent Sh. B.B Pradhan appeared and participated in the hearing held on 5.10.21 through video conferencing, though no written objection was filed by him. The record reveals that the impugned order u/s 7A was passed by the commissioner on 26.7.21 and served on the appellant on 30.7.21. Hence the appeal filed on 24.9.21 is within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount provided u/s 7 –O of the Act. The learned counsel for the appellant submitted that

the impugned order has been passed taking into consideration the supplementary allowances, monthly bonus and incentives paid to the employees though basic salary of all the employees has been correctly shown in the salary register and appropriate amount has been contributed to the EPF& MP Fund. During the inspection made by the APFC/EO, all the documents were made available and the establishment had extended all necessary co-operation. The EO submitted his draft as well as final reports, arbitrarily calculating the contribution payable by the establishment. In respect of EO's report dt 4th Jan 2018, 3rd Sept 2019, 4th Nov 2019 and 16th July 2020 the establishment had submitted detail reply. But the commissioner without going through the details of the said reply passed the order, which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C including the judgements rendered in the case of Bridge & Roof Co (India) Ltd vs UOI and Manipal Academy of Higher Education vs PF Commissioner he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the principle of universality. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. He also submitted that the special allowances paid not being contractually agreed falls outside the definition of basic wage defined u/s 2 (b) of the EPF & MP Act. Not only that the supplementary allowance being a variable payment can not fall under the category of basic wage since the same comprises non-cash benefits and basically in the nature of reimbursement of expenditures made.. He also submitted that the demand made by the establishment for supply of the basis of calculation and opportunity to cross examine the EO was not considered by the commissioner. All these aspects if would be considered, the appellant has a fair chance of success. Thus 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 all kind of business activity is encountering huge loss. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted

that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

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. He also submitted that the salaries of the employees have been intentionally bifurcated to avoid PF contribution and defeat the very purpose of the Act.

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 Sept 2014 to June 2017 and the amount assessed is Rs35,35,82,601/-Without going to the other detail as pointed out by the appellant for 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 extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of M/S Benars Valves Ltd &Others vs Commissioner of Central Excise,(Appeal, civil 5166/2006) wherein it has been held that **“if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.”** He also submitted that the appellant has least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as has been held by the Appex court in the case of **MulchandYadav and Another vs Raja Buland Sugar**

Company and another reported in(1982) 3 SCC 484 that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default ,the amount assessed, 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 30%. Accordingly the appellants are directed to deposit 30% of the assessed amount within 8 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 Registrar 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. There would be an interim stay on the impugned order till the next date. Call the matter on 10.01.2022 for compliance of the direction.

Presiding Officer
CGIT, New Delhi