

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

APPEAL NO. CGIT- 2 / EPFA /90 /2019

M/s. Clearship Forwarders Pvt. Ltd. - Appellant

V/s.

The Assistant Provident Fund Commissioner,

EPFO, Navi Mumbai. - Respondent

ORDER

(Delivered on 31-12-2024)

M/s. Clearship Forwarders Pvt. Ltd./appellant-applicant has challenged the legality of the orders dated 11.07.2019, passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short "the EPF Act"), by the Assistant Provident Fund Commissioner Vashi / respondent in the present appeal and by these applications, the applicant prays for waiver from prerequisite deposit u/s. 7-O of the EPF Act alongwith stay to the orders under appeal during pendency of lis.

2. The appellant is an establishment involved in supporting an auxiliary transport activities of travel agencies amenable to the provisions of the EPF Act and meticulous in rendering compliances towards the EPF Act and the scheme. Due to stiff financial constraint resulted in delay in distributing the salary to the employees and thereby compelled to remit monthly PF contribution belatedly therefore respondent conducted joint enquiry for levy of Damages and Interest by denying natural

Justice and passed orders on the same date i.e. 11.07.2019 that too without recording any tenable reasons. The applicant contends that, he has a good case on merit and as per various decisions of the High Court, it will be just to waive the amount of prerequisite deposit as it has been laid down that, prerequisite deposit of amount is applicable in case of orders passed u/s. 7-A of the EPF Act and this Court has power to waive the amount thus prayed accordingly.

3. The respondent filed the counter reply on record without filing separate reply to these applications and thereby stated that, the order under appeal have been passed legally by affording reasonable opportunity in the enquiry therefore, there is no illegality in the orders under appeal and ultimately prayed for rejection of the application for waiver as well as stay.

4. I have heard Mr. Chheda representative for the appellant and Mr. Surana Adv. for the respondent.

5. There cannot be any quarrel about the provisions of the EPF Act that, the orders in respect of Interest passed u/s. 7-Q of the EPF Act is not appealable, however if the order is composite such as the order u/s. 7-I and the Sec. 14-B of the EPF Act, such composite order is appealable. In the case in hand the appellant has challenged the order u/s. 7-Q alongwith the order u/s.14-B of the EPF Act therefore the appeal is maintainable.

6. It is contended on behalf of the appellant that, while passing the orders under appeal prescribed procedure was not followed, without issuing show-cause notice the provisions of Sec. 14-B & 7-Q were invoked. While issuing summons the amount of damages was quantified, In fact the damages should be quantified

only on the basis of material on record that too after hearing the parties however without giving opportunity of person hearing the order has been passed. While passing the order in respect of damages, the reason for delay payment was not at all considered by the Authority and inspite of discretion, the maximum amount of damages was levied against the appellant as such the orders under appeal are illegal.

7. After considering the various grounds raised on behalf of the appellant alongwith the copy of orders under appeal, it seems that all these points required to be considered exhaustively on merit and that can be considered only at the time of deciding the appeal on merit however it can be safely said that, the appellant has made out a prima-facie case at this stage, the balance of convenience lies in favor of the appellant and considering the hardships, the appellant is entitled for stay to the orders under appeal.

8. It is worthwhile to mention here that, though the appellant is seeking waiver from depositing prerequisite amount u/s. 7-O of the EPF Act, however as per the settled position of Law, the provision of Sec.7-O is not applicable to the appeal against the order u/s. 14-B of the EPF Act therefore there is no question of any waiver as prayed.

9. It seems that, the amount of Rs.09,43,172/- has been assessed and levied towards interest in the order u/s. 7-Q of the EPF Act therefore, I am directing the appellant to deposit the amount of Rs.09,43,172/- towards Interest with the respondent if not deposited earlier.

In the result, the applications are allowed. The effect and operation of the orders u/s. 14-B & 7-Q of the EPF Act passed by the respondent are stayed during the pendency of the appeal only on depositing the amount of Interest levied in the order u/s. 7-Q of the EPF Act with the respondent within four weeks from the date of this order, if not deposited earlier.

Sd/-

Date: 31-12-2024

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