

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT-II, ROUSE AVENUE, DISTRICT COURT COMPLEX,
DELHI.**

Present:

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

ATA No. D-2/31/2021

M/s. A2Z Infra Services Ltd.

Appellant

Vs.

RPFC/ APFC, Gurugram East

Respondent

Order dated :-02-February-2022

Present:- Shri J.R. Sharma, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and an application filed by the appellant praying an interim order of stay on execution of the impugned orders passed u/s 14B and 7Q of the EPF&MP Act, by the RPFC Gurugram. Being noticed the Respondent appeared through it's counsel and the matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a Ltd Company challenging the order dated 11.10.2021 passed by the RPFC u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs 1,18,66,152/- as damage and Rs 1,38,87,917/- as interest for the delayed remittance of the PF dues for the period 4/2012 to 4/2019.

It has been stated by the appellant that the commissioner by notice dt 17.06.2019. had called upon the establishment show cause as to why damage shall not be imposed and interest shall not be calculated for the delay in remittance of the PF contribution of it's employees for the above said period. In response to the same, the authorized representative of the establishment appeared and disputed the calculation by filing a written submission, on the basis of which a revised calculation was prepared and a fresh notice for a revised period and amount, dt 20.09.2021 was served. But the commissioner during the inquiry, without considering the oral and written submission made and the grounds stated disputing the proposed damage, passed the impugned order in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of interest has been assigned. Citing the judgment of the Kranti Associates Pvt Ltd vs Masood Ahmed Khan and Others (2010) 9,SCC, 496 he submitted that a quasi judicial authority must record the reasons in support of it's conclusion. Absence of reason makes the finding illegal and arbitrary. He also submitted that the commissioner in utter violation of the principle laid down by the Hon'ble SC, in the case of RSL Textiles, has not given any

finding on the mensrea of the establishment behind the delay in remittance. Despite the departmental circular and provision of the Accounting Manual, the commissioner in this case proceeded to inquire in respect of a very long period which again makes the impugned order illegal. No due consideration was given to the mitigating circumstances leading to delay in remittance. It is also submitted that the establishment is into the business of providing management services including mechanized house keeping and technical services to various Govt and semi Govt Departments who usually cause inordinate delay in release of the bills. Some documents evidencing the same have been filed. He thereby submitted that the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted and an interim order preventing execution of the impugned order pending disposal of the appeal is not passed.

The Registry of this Tribunal has pointed out that the appeal has been filed within the prescribed period of limitation.

The learned counsel for the respondent Mr Mahanta in his reply took serious objection to the prayer of interim stay and argued that he has instruction from the department that the establishment is a habitual defaulter which is evident from the admission of the establishment and observed in the impugned order that during the inquiry it had made deposit of damage and interest assessed in other proceeding. He, thus, argued that no order of interim stay should be granted. He also submitted that there are two separate orders passed u/s 14B and 7Q of the Act and as such the appeal challenging the order u/s 7Q is not maintainable.

In his reply, the learned counsel for the appellant while pointing out the defects and discrepancies in the impugned orders including no finding on the mensrea for delayed remittance entailing liability for damage, submitted that the two separate orders are the out come of a common summon and common proceeding and hence a composite order in respect of which appeal is maintainable.

The position of law in this regard was discussed by the Hon'ble SC in the case of Arcot Textiles Mills case and it was held that the order passed u/s 7Q if a composite order being passed u/s 7A is amenable to appeal u/s 7I of the Act. It was further held that any composite order a facet of which is appealable, the other part would be appealable too. If an independent order is however passed, no appeal would be maintainable in respect of the interest compound under section 7Q of the Act.

The position was again discussed by the Hon'ble High Court of Delhi in the case Gaurav Enterprises vs UOI, and it has been held that in order to determine if the order passed u/s 7Q is an independent order or composite order, the facts relevant for consideration are

- 1- if the notice to show cause was common
- 2- if common reply was filed by the establishment
- 3- if common proceedings u/s 14B and 7Q were held
- 4- if two separate orders or a common order was passed.

The Hon'ble court have further held that, if the notice to show cause, reply to the notice and proceedings are common, mere passing of two separate orders on the same date would not render the proceedings under section 14B and 7Q independent of each other.

In this case as seen from the impugned order a common show cause notice dt20.09.2021 was issued to the appellants establishment along with a common calculation sheet attached as Annexure A calling the appellants to show cause in respect of the proposed damage and interest. The establishment after appearance filed a common reply which was taken on record by the commissioner . There is no material on record to believe that separate proceedings were held. At the end of the inquiry, on the same day the commissioner however had passed two separate orders assessing damage and calculating interest. For the discussion in the preceding paragraphs and for the principle decided in the case of Gourav Enterprises vs UOI decided in WP(C)8485/2021, it is held that the impugned order passed u/s 7Q being a composite order is appealable and the appeal is held maintainable and admitted.

The impugned order shows that the notice at the first instance was sent for the period 04/12 to 04/19. On filing of a written submission by the establishment a fresh notice dt 20.09.21 was issued in which the period of inquiry was mentioned as 23/02/13 to 03/06/2019. In the impugned order the commissioner, as if not sure about the period of inquiry has mentioned two periods in the concluding part of the order, which makes no sense. Without delving into the other details as pointed out by the appellants, it is thus held that the appellants has a strong case to argue in the appeal. Unless the execution of the order impugned in the appeal assessing damage and interest would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay cannot be unconditional. Hence the appellants is directed to deposit a nominal amount i.e. 5% of the damage and interest assessed within 4 weeks from the date of this order as a precondition for stay of the impugned orders assessing damage and interest, by depositing challan before the EPFO, failing which there would be no stay on the impugned order. Call on 08-March-2022 for compliance of the direction and reply by the Respondent. Interim stay granted earlier shall continue till the next date.

(Presiding Officer)