

**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-1/106/2019

M/s Ajay Plastic Industries

Appellant

Vs.

CBT & APFC, Delhi (N)

Respondent

ORDER DATED:-07.04.2021

Present:-

Shri Rajiv Shukla, Ld. Counsel for the Appellant.
Shri Naresh Gupta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal 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.

Copy of the petition being served on the respondent, learned counsel for the respondent Shri Naresh Gupta appeared and participated in the hearing held on 20.2.20, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 18.3.19 by the APFC, Delhi (North) and was communicated to the establishment on 25.3.19. The appeal was filed beyond the period of limitation, but by order dated 22.1.20, the delay has been condoned.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7-O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without identifying the beneficiaries. The appellant establishment was a proprietorship concern engaged in production of plastic materials, but the production unit has been closed since 2018. The commissioner served the notice of 7A inquiry for the period 4/14 to 5/18.

Though the authorized representative of the establishment had visited the office of the respondent on 21.2.19, extended all necessary co-operation he was told to sign the attendance sheet only as the inquiry Authority was busy in a meeting. He was told that the next date of hearing will be intimated. But to his utter surprise the inquiry was closed on 21.2.19. And the impugned order was passed on 18.3.19. After a long gap i.e on 11.10.19 the appellant received a communication from the EO regarding the final order passed in the inquiry. The commissioner while adjudicating the matter took a wrong and misconceived view and without identifying the beneficiaries passed the order of assessment on 18.3.19. The assessment based upon the report of the EO only is illegal and liable to be set aside. The amount so determined is not payable to any one as the beneficiaries have not been identified. More over the commissioner while assessing the liability of the establishment never took in to account the deposit of Rs3,92,184/- made during the pendency of the inquiry, as he was facing a threat of criminal action. The establishment on receipt of the notice ,though submitted a written reply stating there I n about the closure of the unit since 2017-18 and wanted some time to reconcile the account and employee status the same was not considered by the commissioner, who made a false observation in the impugned order about the AR of the establishment admitting the liability.. He thus prayed for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act on the ground that the appellant has a strong arguable case in the appeal. On behalf of the appellant reliance has also been placed in the case of **APFC vs. M/S Nandalal**, decided by the Hon'ble High Court of Patna to submit that the commissioner cannot pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the E O only. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause

undue hardship to the appellant whose commercial activity has come to a halt.. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. To support his submission reliance has been placed in the case of M/S Banars Valves Ltd &Others vs. Commissioner of Central Excise, decided by the Hon'ble Supreme Court 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.

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. Learned counsel Mr. Gupta also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd VS RPFC, to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment on the basis of the report of the EO only, without giving adequate opportunity to the establishment for proper defence. Further more, the beneficiaries were not identified during the inquiry..

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. For the same, it needs to be considered that the period of default in respect of which inquiry was initiated was from 4/14 to 5/18. The amount assessed is Rs 26,21,229/-. There is no mention in the order about the basis of the calculation arrived and identification of the beneficiaries.

Without going to the other details pointed out by the appellant 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 pass an order keeping in view the principle decided in the case of **Banaras Valves** referred supra ,as well as considering the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration. The Hon'ble Apex Court in the case of Banaras Valves referred supra have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter has pleaded about the closure of the production unit to make this Tribunal believe the undue hard ship it would face if the waiver of the condition of pre deposit is not ordered.

But considering the submission of the parties, it is held 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 20%. Accordingly ,the appellant is directed to deposit 20% of the assessed amount within 4 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 orders till disposal of the appeal. List the matter on 19.05.2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-

Presiding Officer