

**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-2/08/2020**

M/s Apra Auto (India) Pvt. Ltd.

Appellant

VS.

RPFC/APFC, Gurgaon

Respondent

**ORDER DATED:- 08.04.2021**

Present:- Ms. Neha Srivastava, Ld. Counsel for the Appellant.  
Shri Satpal Singh, Ld. Counsel for the Respondent.

This order deals with appellants prayer for condo nation of delay, admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the orders dated 27/3/18 passed by the RPFC Gurgaon u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 16,38,313/ as damage and Rs 8,00,789/-towards interest for delayed remittance of EPF dues of it's employees for the period 3/2014 to 6/2015. Notice being served on the respondent, learned counsel Shri Satpal Singh appeared and participated in the hearing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 27/3/18 and the appeal has been filed on 4/2/20, i.e beyond the period of limitation. A separate petition has been filed by the appellant praying condo nation of delay for the reasons explained therein. Prayer has also been made for stay on the execution of the impugned order passed u/s 14B and 7Q of The Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal. The learned counsel representing the respondent has not filed any document but during argument countered the documents of the appellant placed on record.

The Registry has pointed out the inordinate delay on the part of the appellant in filing the appeal. It was also pointed out that no authenticated copy of the impugned order was filed along with the memo of appeal. In response to the objection

raised by the Registry the appellant by filing an application stated that the impugned order was passed ex parte against the appellant establishment. It could know about the order much after the date of the order and requested for supply of the same. But the office of the Respondent only handed over a photo copy on 19/12/19. Application under RTI being filed the appellant got the certified copy of the order only on 9/3/20. Before that the appeal was filed along with the photo copy. With regard to the delay in filing the appeal it has been explained that the delay occurred due to non supply of the order though under the rule a copy of the order need to be supplied to the establishment soon after the passing of the order and the period of limitation starts from the date of dispatch of the order. The appellant thereby submitted that the appeal is not barred by limitation as the same was filed before receipt of authenticated copy of the order.

The learned counsel for the Respondent in his reply submitted that the plea of non receipt of the order is not convincing since the establishment at the beginning of the inquiry was participating and the copy of the order was duly communicated. But the respondent has not placed any document on record to prove that the order was communicated in time to the appellant establishment. It need to be noted that this Tribunal before commencement of the hearing on admission and condonation of delay had directed the Respondent to produce the LCR of the inquiry, which could have thrown light on the correctness of the plea taken by the appellant on delay. But for reasons best known to the Respondent, it withheld the LCR in utter disregard to the direction of the Tribunal. In view of the withholding of the LCR by the respondent this Tribunal has no hesitation in accepting the explanation offered by the appellant for condonation of delay. Accordingly, the delay is condoned and the appeal is admitted.

The other petition filed by the appellant is for an interim order of stay on the orders passed u/s 14B and 7Q of the Act, describing the same as a composite order. During course of argument it was noticed that the commissioner while discharging a quasi judicial function had paid least regard to the power vested on him for discharge of the duty. In a very cryptic and superficial manner and without assigning any reason in support of his finding passed the order imposing penal damage and interest. He passed the impugned orders adopting copy/paste method by using the computer which is evident from the fact that in the order passed u/s 14B ,he has mentioned

about the interest payable by the establishment as shown in the schedule appended to the impugned order passed u/s 14 B of the Act. Similarly the order passed u/s 7Q is nothing but a reproduction of the order passed u/s 14B of the Act. Thus it is a clear case of non application of mind by the commissioner while passing the orders.

The learned counsel for the appellant submitted that the order was passed behind the back of the appellant and no opportunity was given for explaining the mitigating circumstances. Citing the judgments of the Hon'ble Supreme Court in the case of **McLeod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and in the **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017LLR 337** he submitted that the impugned order u/s 14 B is illegal for want of finding on the mensrea of the establishment .the appellant has a strong arguable case and the impugned order if would not be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. He also prayed for stay of the order passed u/s 7 Q describing both as composite orders.

Be it stated here that the commissioner though in a mechanical manner has passed two separate orders. The Hon'ble S C in the case of **Arcot Textile Mills Ltd vs. RPFC decided in civil appeal no 9488/2013** have held that when two separate orders are passed in a proceeding the same cannot be held as a composite orders. Hence in this case there being two separate orders and the order passed u/s 7Q not being appealable, the prayer for stay on the same cannot be considered and rejected.

The learned counsel for the respondent raised serious objection to the prayer of the appellant for interim stay and submitted that the very purpose of EPF&MP Act is to safeguard the interest of the employees against the mighty employer. Unconditional stay of the impugned order would defeat the very purpose of the beneficial legislation.

The appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe about its fair chance of success. Though, the tribunal at this stage of admission is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file its objection, the present appeal stands in a different

footing as the commissioner without assigning any reason has passed a cryptic order. In the case of Mcleod Russel and RSL Textile referred supra the Hon'ble Apex court have time and again observed that the imposition of damage being penal in nature the commissioner discharging a quasi judicial function is duty bound to give a finding on mensrea of the establishment for the said delayed remittance.

There is no dispute on facts that the remittance has been made after a considerable delay. But the appellant in this appeal has offered an explanation of its bonafides in doing so. The commissioner in this case has neither mentioned the basis of calculation of damage in the order nor any document showing the manner of calculation was made available to the appellant. The law is well settled that all the delay in remittance of the EPF dues will not attract liability for penal damage. In the case of Mcleod Russel referred supra the Hon'ble Apex court while discussing the case of **ESI Corporation vs. HMT Limited (2008)3SCC35** the Hon'ble Apex Court have held that the damage by way of penalty is not mandated in each and every case. Imposition of penalty is not a mere formality. Alternatively stated, if damages have been imposed u/s 14B it will be only logical that mensrea and/or actus reus was prevailing at the relevant time. The same view has been taken in the case of APFC vs. Management of RSL Textile referred supra wherein the Hon'ble Supreme Court have held that in the cases where there is no finding rendered by the original authority or the appellate authority with regard to mensrea the order cannot be held to be a speaking or logical order.

In this case as discussed above the commissioner in a fanciful manner passed a cryptic order which is based upon the report of the EO only. The basis of calculation and a finding on mensreas is evidently missing in the order. Hence, it is held that the impugned order is patently illegal and cannot sustain in the eye of law. Considering the circumstances it is felt to dispose of the appeal on merit at this stage of admission without pushing the appellant/establishment to further harassment. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed at this stage of admission. The impugned order passed u/s 14B of the EPF and MP Act is hereby set aside. But no order is passed in respect of the order u/s 7Q of the Act as the same is not appealable. Consign the Record as per Law.

Sd/-  
Presiding Officer