

**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.**

**APPEAL NO. D-1/37/2020**

M/s. B2R Technologies Pvt. Ltd.

Appellant

Through:- Ms. Sanjana Bali, Ld. A/R along with Shri Dhiraj Dolwani for the  
Appellant.

Vs.

APFC, Delhi (South)

Respondent

Through:- Shri Puneet Garg, Ld. Counsel for the Respondent

**ORDER DATED 06.11.2020**

This order deals with appellant's prayer for admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the order dated 27.02.2020, passed by the APFC Delhi(South) u/s 14B and of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 1,72,434/- as damage for delayed remittance of EPF dues of it's employees for the period 04/2015 to 07/2018. Notice being served on the respondent, learned counsel Shri Puneet Garg appeared and participated in the hearing held on 02<sup>nd</sup> November, 2020 via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 27.02.2020 and dispatched to the appellant establishment on 02.03.2020 and the appeal has been filed on 07.10.2020, i.e. beyond the period of limitation. No separate petition has been filed by the appellant praying condonation of delay for the reasons explained in the memo of appeal. But prayer has been made for stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

The appellant has stated that inquiry has been conducted ignoring the principles of law on the subject pronounced by the Hon'ble Supreme Court and other High courts and the principles of natural justice as the mitigating circumstances and acute financial problem of the appellant represented in writing was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. It is also submitted that the establishment is a start up Business Process Management Company and a social Entrepreneur, which provides education and employment to the youth of rural areas of Uttarakhand. The establishment suffered huge financial loss during the period 2013 to 2016. Unlike other start ups the establishment managed to survive by adopting several austerity measures and continued to deposit the EPF Dues of its employees, though at times slight delay occurred in the remittance. All these aspects, though, pointed out were not considered by the commissioner nor any finding has been given on the mens rea of the establishment for the delay in remittance. She, thereby, submitted that the appellant has an arguable case in the appeal. Unless the appeal is admitted with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant. With regard to the delay in filing the appeal as pointed by the registry, she submitted that the impugned order was communicated on 02.03.2020 and the appeal was filed on 07.10.2020, which is beyond the period of limitation prescribed under the Act. But the Hon'ble Supreme Court in the suo moto WPC No.3/2020 have directed for the extension of limitation for the prevailing condition on account of COVID 19. Hence, the appeal is well within the period of limitation.

The learned counsel for the respondent fairly submitted that for the order of the Hon'ble Supreme Court the appeal does not suffer the defect of limitation. There being no other defect pointed out by the Registry, the appeal is admitted.

A prayer has been made by the appellant for an order to be passed directing stay on the execution of the impugned order pending disposal of the appeal. AR for the appellant submitted that the notice dt18.09.2019 was issued for inquiry u/s 14B and 7Q of the Act for the period 01/11 to 11/13. But the establishment pointed out about the earlier proceeding and the overlapping period leading to revision of the period from 04/15 to 02/18. It was also pointed out during the hearing that for the earlier assessment u/s 14 B , A.T.A. No 83(4)2016 is pending before this Tribunal in which an order of stay on the execution of the impugned order has been passed. Though during the impugned inquiry the appellant establishment made deposit of the interest amount of Rs94,297/- and the commissioner in the impugned order has acknowledged the same, surprisingly recovered the entire amount mentioned in the notice towards damage and interest from it's bank account without giving notice for the same. Thus, the AR for the appellant submitted that the respondent be directed to refund the entire recovered amount with interest and not to take any further Coercive action pending disposal of the appeal as the appellant has a strong prima facie case to argue and there is fair chance of success. If the amount recovered would not be refunded pending disposal of the appeal, that would cause undue hardship making the relief sought illusory. To support her argument she has relied upon the judgement of Escorts India VS Union of India amongst others.

The learned counsel for the respondent while acknowledging the fact of recovery including the recovery of the interest in excess ignoring the deposit of interest during inquiry submitted that the appellant has no remedy available before this Tribunal to get the refund as the recovery order passed u/s 8F of the Act is not appealable. He thus submitted that that the appellant has to approach the appropriate authority to get refund of the interest recovered. In respect of the assessed amount of damage recovered from the Bank account, he submitted that it was so done when there was no stay on the execution of the order and the action of the recovery officer cannot be found with fault. He also submitted that the amount of damage recovered should not be ordered for refund and the prayer for stay as made by the appellant being not maintainable in the present scenario be rejected.

Having heard the argument advanced by the AR/counsel for both the parties the undisputed facts which emerged are that the appellant had deposited the entire proposed amount of interest during the inquiry, but the respondent has again recovered the same from the account of the appellant in exercise of the power u/s 8F of the Act. Similarly the assessed amount of damage has also been recovered before filing of the appeal. Hence, the order impugned in this appeal has already been executed making the prayer of the appellant for interim stay at this stage infructuous. The prayer of the appellant for a direction of refund the said amount with interest also can not be allowed at this stage of the appeal as it would have the effect of granting the ultimate relief sought in the appeal, when the respondent is yet to file it's reply. The stand of the appellant that no proper notice of recovery was served on them, can be considered during the hearing of the appeal to remedy the wrong if committed by the respondent.

The prayer of the appellant for a direction to the respondent for refund of the interest recovered illegally cannot be dealt and decided in this appeal as the action taken by the EPFO in exercise of the power u/s 8F of the Act is not appealable before this Tribunal. Hence the petitions seeking stay and refund filed by the appellant are held devoid of merit and rejected. Call on 07.12.2020 for filing of reply by the respondent.

Sd/-

(Presiding Officer)