

**BEFORE THE HON'BLE 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.

M/s. Bajaj Print Solutions

Appellant

Vs.

APFC, Delhi (East)

Respondent

ATA No. D-1/35/2021

ORDER DATED:- 28.10.2021

Present:- Shri M.K Dwivedi, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, 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 S N Mahanta appeared and participated in the hearing held on 5/10/21, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 31/3/21 by the APFC, Delhi(East) was communicated to the establishment on 16/4/21 and the Appeal was filed on line on 12/9/21. Thus the appeal was filed beyond the period of limitation. But for the extension of time allowed by the Hon'ble SC in suomoto WPC No 3/20 on account of the shut down, the appeal is held to have been filed within time. 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 on a wrong appreciation of facts in respect of excluded employees. The appellant/establishment was a diligent contributor of the PF dues of it's employees. But the unit has been closed since 14/4/2018 and this was intimated to the EPFO by letter dated 8/9/18. Despite the information the commissioner served the notice of 7A inquiry for the period 5/16 to 4/18 to assess the unpaid contribution in respect of some employees in respect of whom a complaint was made.

Though the authorized representative of the establishment visited the office of the respondent, extended all necessary co-operation another notice was served alleging non attendance during inquiry. The authorized representative again visited the office of the respondent and was informed about some difference in the amount of salary shown in the salary sheet and the amount of salary shown in the balance sheet. The appellant establishment by letter dated 20/3/21 requested for some time to verify the records. But to his utter surprise the inquiry was closed and the impugned order was passed on 31/3/21. On 14/4/21 the appellant received a communication from the EO regarding the final order passed in the inquiry. He then filed a review application which remained pending for a long period. When recovery notice was served the appellant approached the recovery officer to know about rejection of his review petition. The commissioner while adjudicating the matter took a wrong and misconceived view and came to hold that in respect of sixteen employees the basic salary has been intentionally shown as more than 60% of the gross salary in order to treat them as excluded employees. The assessment is based upon the report of the EO only and the commissioner in the impugned order has not given any justification supporting his observation, which makes the order illegal and liable to be set aside. The establishment on receipt of the notice, though submitted a written reply stating there in for some time to reconcile the account and employee status, the same was not considered by the commissioner, who made an observation without any basis in the impugned order about the eligibility of excluded employees. 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 it was also submitted 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. Mahanta 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 cannot 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 when time was sought to verify the Balance Sheet with reference to the salary sheet. The appellant has made deposit of some amount assessed which is not disputed by it.

Thus 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 is from 5/16 to 4/18. The amount assessed is 8,81,438/- .Without going to the other details as 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 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 30%. Accordingly ,the appellant is directed to deposit 30% of the assessed amount within 6 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 15.12.2021 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.

Presiding Officer