

Appeal No. D-1/16/2021

Through:- Sh. Rikesh Singh, Ld. Counsel for the Respondent.

During course of hearing of the petition seeking stay, the learned counsel for the appellant submitted that the 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 well 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 sole proprietorship firm engaged in supply of Manpower, housing and catering etc and most of its clients are Govt Departments and corporation. The firm receives payment from its clients on reimbursement basis which often taken more than 45 days. However, the firm is diligent about its statutory obligations under the EPF ACT 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 in the written submission filed during the inquiry, were not considered by the commissioner nor any finding has been given on the mens rea of the establishment for the delay in remittance. It was also submitted that the entire amount proposed under the notice towards interest was deposited by the appellant during the pendency of the inquiry before the commissioner, which proves the bonafide of the establishment. He, thereby, submitted that the appellant has a strong 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.

The learned counsel for the respondent while acknowledging the fact of deposit of the interest by the establishment that the commissioner has passed a speaking and well reasoned order. A clear observation has been made in the impugned order with regard to the mensrea of the establishment for the delayed remittance. Pointing out the period of delay as mentioned in the calculation sheet sent to the appellant along with the notice and filed along with the appeal, he pointed out that the establishment is a habitual defaulter and the provision of law laid u/s 14 B since has an underlying purpose of deterring the employer from causing delay in remittance of PF dues, no order for interim stay should be passed.

In reply the learned counsel for the appellant submitted that the commissioner has not given any finding on the mensrea of the establishment in holding back the deposit. What ever observation in this regard has been made in the impugned order is nothing but the personal and general observation of the commissioner. The assumption of the commissioner can not be accepted as a finding in the line of the direction given by the Hon'ble Supreme Court in the case of R S L Textiles. He thereby submitted for an

unconditional order of interim stay on the impugned order pending disposal of the appeal.

Having heard the argument advanced by the 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, and had filed a written submission explaining the mitigating circumstances causing delay in remittance. The commissioner has not given any finding in the impugned order on the mensrea of the establishment. Rather she has reflected her own general assumptions with regard to the delay often caused by the establishments. The personal assumption of an officer discharging the functions of a quasi judicial Authority can not be taken as a reason for any order passed under the facts of a given case.

But at the same time it is felt proper to observe that the Tribunal , at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter since the reply of the respondent is yet to be filed. For consideration of the prayer for interim stay, the factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005SCCpage1** and in the case of **Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

Thus, considering the submission advanced by the learned counsel for both the parties and the factors like the period of default and amount assessed, it is felt proper to stay the impugned order passed under section 14B ,pending disposal of the appeal.

Hence, in this case it is directed that there would be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 10% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e on 02-june-2021 for compliance of the direction.

(Presiding Officer)