

**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-1/14/2021

ORDER DATED:- 12.04.2021

Present:- Shri Haribansh Manav, Ld. Counsel for the Appellant.
Shri B.B.Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and prayer made by the appellant for an interim order of stay on the execution of the impugned order pending disposal of the appeal.

Notice being served on the respondent, the learned counsel Shri B B Pradhan representing the respondent appeared and participated in the hearing.

The appellant has challenged the order dated 20/1/21 passed u/s14B of the EPF &MP Act by the APFC Delhi South wherein the appellant establishment has been directed to deposit, Rs15,29,351/- as damage for delayed remittance of the EPF dues of its employees for the period 4/13 to 3/18. Alleging that the order has been passed in a mechanical manner without assigning good reasons for imposition of penal damage, the appellant has stated that the mitigating circumstances shown by the representative of the appellant were never considered by the commissioner while adjudicating the matter. Citing the judgment of the Hon'ble SC in the case of APFC vs. Management of RSL Textiles Ltd it was submitted that the order passed by the commissioner is illegal and not sustainable in the eye of law as no finding on the mensrea has been rendered by the commissioner. As such no damage as a punitive measure should have been imposed by the commissioner.

The learned counsel for the respondent, while supporting the impugned order submitted that the very purpose of EPF &MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to the Act as a deterrent to the omission and delay caused by the employer in deposit of the dues. He thereby submitted that any order of stay if allowed, would defeat the purpose of the Act.

During course of argument the learned counsel for the appellant submitted that the appellant is an establishment engaged in the business of publishing and selling few

magazines to its customers. The business is facing acute competition due to emergence of social media, leading to massive fall in the sale. Not only that the appellant often encounters delay in getting its Bills cleared, for which it has been forced into many civil litigations. On account of these unforeseen reasons sometimes delay occurs in remittance of the EPF dues. The same is neither intentional nor attributable to the establishment. He thereby submitted that the establishment since does not have any evil intention behind the delayed remittance, the penal damage should not have been imposed. But the commissioner without considering the mitigating circumstances, passed the cryptic and non speaking order which is liable to be set aside.

There is no dispute on facts that the remittance has been made after a considerable time. The appellant though has offered an explanation of its bonafides, no document to that effect has been filed, to which the learned counsel Mr. Pradhan took serious objection. He also submitted that financial difficulty, as has been held by the Hon'ble SC cannot be accepted as a valid ground to accept the bonafide of the establishment for delay in remittance.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the prayer of interim stay made by the appellant who has argued extensively about the undue hardship likely to be caused if the impugned order is not stayed. The Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt. Ltd vs. Union Of India reported in 2005SCCpage1** and the Hon'ble High court of Delhi, in the case of **Escorts Limited and another vs. Union Of India reported in 43(1991)DLT 207** have held that the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 4/2013 to 3/2018, and the amount of damage assessed is equally big. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in (1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case the appeal being filed within the period of limitation, the same is admitted. It is directed that there should be an interim stay on the execution of the impugned order pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 20% 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 13-May-2021 compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-
Presiding Officer