

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 1/EPFAT DELHI**

774(4)2013

M/s Divas Laboratories Ltd. vs. APFC/RPFC, Delhi.

Present: Sh. S.K Khanna, Ld. Counsel for the appellant.
Ms. Santwana Aggarwal, Ld. Counsel for the respondent.

ORDER
14.11.2025

1. On the objection of the respondent that arguments have been heard on the application for condonation of delay in the present case.
2. Record perused. This appeal was has been filed on 04.11.2013 against the order dated 31.03.2008 passed by Assistant Provident Fund Commissioner. On the very first date i.e. 12.11.2013, appeal was admitted for hearing and stay was granted against the impugned passed **under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act")**, subject to the condition of depositing 30% of the assessed amount. Assessed amount has been deposited. Counter reply was filed on 28.10.2016. Thereafter, matter has been adjourned for several dates. When the new counsel had been appointed, she raised the objection stating that still the application for condonation of delay has not been disposed of. In this background, arguments have also been heard.
3. Appellant has filed an application **under section 5 of the Limitation Act for condonation of delay**, stating that appeal has been filed within limitation because the impugned order had been received only on 18.10.2023 and within sixty days he has filed the appeal. He has disclosed the facts in the appeal that appellant, a covered establishment was complying the provisions under the Act regularly till January 2005 under code no. DL/27805. Due to differences arise among the Directors of the company, business was slow down and ultimately establishment was closed in January, 2005. He was peacefully living at his native place after the closure

of his establishment. However, in August, 2013, one of the Directors, namely Sh. Rajeev Aggarwal received a notice dated *nil* wherein he was served with a show-cause notice issued by the Recovery Officer of the respondent, asking him to show cause why not Sh. Rajeev Aggarwal, Ex. Director may be committed to civil prison in execution of a certificate (Form No. CP-25) issued by the respondent **under section 8-F of the Act**. After having failed to receive the copies of the related documents dated 31.03.2008, he made written request to the respondent through RTI for supply of documents, marked as **Annexure A-3**, which was received on 18.10.2013. He further submitted that possession of the premises of where it was functioning was handed over back by the concerned Directors to the owners as is evident from the copy of the handing over/taken over letter dated 18.09.2004. During the last day of proceedings, he tried to submit the resignation letter of some of the employee as **Annexure A-8** with this appeal and sought further two months time to produce but was declined. As such, he submitted that the application was within limitation.

4. Respondent, in his reply, first narrated the object of the **Employees' Provident Funds & Miscellaneous Provisions Act, 1952**, which meant for providing social security to employees working in any establishment engaging 20 or more persons on any day. Subsequently, it had narrated the facts that provident fund and other contributions have to be deposited by the employer by 15th of the following month. He has stated that the impugned assessment has been made for the period of 06/2004 to 03/2007. He further submitted that despite repeated opportunities appellant failed to produce the relevant record sought from it such as Salary Wages record supported by the books of account for the month of 06/2004 to 02/2005. It submitted that story has been cooked up by the appellant, so, he submits that the appeal is time barred and this Tribunal has not been given any discretion to condone the delay beyond the period of 120 days from the date of issuance of the order.

5. I have heard the arguments at bar and gone through the record of this case. Before proceeding further, provision of **under rule 7(2) read with rule 21 of the Tribunal (Procedure) rules, 1997** is required to be reproduced herein:

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central

Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal. Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

21. Orders and directions in certain cases.—*The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.*

6. From the perusal of the above said rule, it appears that an appellant aggrieved by an order passed by the respondent under various sections must file the appeal before this Tribunal within sixty days. Further, this Tribunal is empowered to condone a delay for an additional sixty days, if the appellant is able to demonstrate the sufficient reason that prevented him from filing the appeal. It is settled law that this Tribunal, being a creature of the statute, cannot extend the limitation beyond what is provided. However, it is settled proposition of law that limitation period is counted from the date of knowledge of the order, not from the date of issuance of the order.

7. The entire reply is silent as to when the order was dispatched and it was communicated to the appellant on which mode. Recovery filed has been produced, but, it did not contain anything when the order was dispatched.

8. On the other hand, appellant has relied upon the documents from A-1 to A-6. A-1 is the letter 14.10.2013, where certain information has been given by the respondent to the appellant under RTI i.e. proceeding dated 31.03.2008, EO's report dated 24.03.2008 etc. So far so, the information at point-8 is concerned as the same is not available. Information regarding the dispatch of the assessment order along with Postal address and postal receipts at point-4 is concerned, the department has replied that the receipt is not traceable.

9. Considering the fact that the information was sought through RTI and the dispatch receipts are not available, and there was a difference among the Director, it is assumed that the appellant has the knowledge of the order only on 18.10.2013, therefore, it is assumed that appeal is filed within the period of the limitation assuming the date of knowledge of the order as 18.10.2013. Moreover in the present case, much water has already been flown, because since 2013 till 2022, respondent has never raised any objection about the limitation. He filed the reply of the appeal. The order under section 7-O (i.e. deposit of 30%) has been complied with. Even, at the time of passing of the order and filing the reply, there was a gap of three years, but no action has been taken.

10. In these circumstances discussed above, application stands disposed of, assuming that appeal is within limitation.


(Presiding Officer)