BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208, ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.

APPEAL NO. D-1/02/2021

M/s. D P Upadhyay — Appellant

Through:- Shri S.K. Gupta, Ld. Counsel for the Appellant.

Vs.

APFC Delhi (West) — Respondent

Through:- Ms. Rachna Aggarwal, Ld. Counsel for the Respondent.

ORDER DATED 20.01.2021

This appeal has been filed challenging two orders dated 21.12.2019 passed by the APFC Delhi, West in exercise of the power u/s 14B and 7Q of the E P F and M P Act, 1952 assessing Rs.2,09,726/- as damage and Rs.1,21,165/- as interest payable by the appellant on account of delayed remittance of EPF contribution of its employees for the period 01.04.2017 to 30.09.2019.

Bereft of unnecessary details the facts pleaded by the appellant are that it is an establishment covered under the EPF & MP Act .and has been diligent in contributing to the statutory dues of it's employees. On 6.12.19 a summon is purported to have been issued directing the appellant establishment to appear and participate in the inquiry fixed to be held on 19.12.2019,in the office of the APFC, Delhi, West. But in fact no summon dated 06.12.2019 was served on the establishment nor any opportunity was actually given to set up its defence during the inquiry. The APFC Delhi in a whimsical manner went on to decide the matter ignoring the absence of the appellant and passed the impugned order imposing the damage and interest without giving any finding about the mensrea of the appellant for the belated remittance. It has also been stated by the appellant that the impugned order was never served on the establishment and it could know about the same when recovery proceedings were initiated. A certified copy of the impugned order along with the calculation sheet was applied for which was supplied on11.12.2020 only. On going through the order and calculation several anomalies were detected and soon thereafter, the appeal was filed within the prescribed time limit computed from the date of knowledge. Thus, the appellant has stated that the appeal be admitted and the arbitrary order passed by the APFC, be set aside .No separate application for condo nation of delay has been filed.

No written objection was filed by the respondent to resist the prayer for condonation of delay. However, the learned counsel appearing for the respondent participated in the hearing and took serious objection to the prayer for condonation of delay. She pointed out that the impugned order was passed on 21.12.2019 and the appeal has been filed after a considerable and inordinate delay of about one year i.e. on 31.12.2020. Whereas, the appellant is under obligation to explain each day of delay, in this case it has only taken a bald plea of non service of the order in due time which cannot be accepted to condone such a long delay. But no document has been placed on record by the respondent in proof of service of the impugned order on the establishment in due time.

The appellant by filing certified copy of the order has taken a stand that the said order came to its knowledge after obtaining the certified copy. The said copy filed along with the appeal contains endorsement which proves that the same was supplied to the appellant on 11.12.2020 and he filed the appeal on 31.12.2020, which is within the prescribed time limit of 60 days when computed from the date of knowledge i.e. 11.12.2020. Hence, in absence of evidence to the contrary it is held that the delay in

filing the appeal is not attributable to the appellant and should be condoned in the interest of justice. Accordingly, the delay is condoned and the appeal being otherwise in order as per the office note is admitted.

A prayer has been made by the appellant for an interim order of stay on the execution of the impugned order pending disposal of the appeal. Describing the orders dated 21.12.2019 levying damage and interest against the establishment as composite orders, the same has also been challenged on the ground of lack of opportunity to set up a defence and explain the alleged delayed remittance. It has also been argued that the establishment on obtaining the certified copy of the calculation forming basis of the order noticed various anomalies with regard to the actual dates of challan and the receipt dates mentioned in the calculation sheet which would have a determinative effect on the finding of the commissioner. Unless proper opportunity would be afforded to explain the same, the end result would be miscarriage of justice. The other limb of his argument is that the commissioner has passed a non speaking order without giving finding on the criminal intention or mensrea of the appellant establishment for the alleged delayed remittance.He also pointed out that the notice was sent proposing damage of Rs 4,52,454/- and interest of Rs 2,45,340/- but considering the payments made during the pendency of the inquiry the amount of damage and interest was reduced to Rs 2.09,726/- and Rs1,21,165/- respectively which is evident from the impugned order. By placing reliance in the case of APFC vs Management of RSL Textiles India Pvt Ltd reported in2017(3)SCC 110, he submitted that the commissioner is duty bound for giving a finding on the mensrea. No finding in this regard renders the order unsustainable in the eye of law.

The learned counsel for the respondent submitted that detailed reply by the management need to be submitted meeting all the points raised by the appellant. However, she submitted that when the appellant, in spite of receipt of summon opted not to contest, the same amounts to admission of facts alleged. The respondent' counsel, thus, while supporting the impugned order submitted that the appellant was given proper opportunity of defending its stand. That opportunity having not been availed then, the appellant is precluded from challenging the order as arbitrary.

But this submission of the learned counsel for the respondent does not appeal to the conscience of this Tribunal. Furthermore, a plain reading of the order does not show when the notice was served on the establishment. There is also no reference in the order about the different dates of adjournment. On the request of the appellant the LCR was called from the office of the respondent and perused. Perusal of the same shows that the summon dated 06.12.2019 was sent to the appellant establishment by post and through email, directing to appear and participate in the inquiry to be held on 19.12.2019. Since, none appeared on behalf of the appellant establishment on 19.12.2019, the commissioner surprisingly went on to pass the final order on the very next date without ensuring the fact of proper service of the summon or adjourning the matter to another date after giving another notice, which is normally adopted in the quasi judicial proceedings. The LCR does not contain any document in proof of the fact that the notice was duly served on the appellant establishment.

This appears to be a very cryptic order, where the commissioner has not discussed anything at all on the basis of the calculation of the damage and interest. There is no material before this tribunal to believe that the basis of calculation was made available to the establishment for a proper reply on the same. It appears as if the commissioner went on deciding the matter without applying his mind while discharging a quasi judicial function. The Hon'ble supreme court in the case of ShriSwamiji of Sri AdmarMutt vs The Commissioner Hindu Religious and Charitable Endowment Dept reported in AIR 1980 SC 1 have held that reason is the soul of the law and when the reason of any particular law seizes, so does the law itself.

In this matter the impugned order is completely silent about the mensrea of the appellant for the delayed remittance. The Hon'ble Supreme Court on repeated occasions i.e. in the case of RSL Textiles referred supra and also in the case of McleodRussel India Pvt Ltd vs. Regional Provident Fund Commissioner reported in 2014 SC 527 have held that when there is no finding rendered on the mensrea or actusreus on the part of the employer, the order becomes illegal. Not only that the practice of accepting the EO report in toto has also been disapproved by the court in the case of Minerva stores vs. RPFC, decided by the Hon'ble High Court of Guwahati reported in1978 Lab I C Cases 1160.

In this matter taking into consideration all the aspects as discussed in the preceding paragraphs, it is held that the cause of justice would be best served if the impugned order at this stage be set aside and remanded for reconsideration after giving proper opportunity to the appellant to set up a defence and explain the circumstances. Hence, ordered. Before parting it is made clear that the orders u/s 14B and 7 Q impugned in this appeal though have been passed separately is a composite order, in as much as the proceedings were taken jointly as seen from the LCR and a common order number has been assigned though typed out separately. Hence, both the orders referred above need to be set aside in the interest of justice.

ORDER

The appeal is disposed off at admission stage. The impugned orders passed u/s 14B and 7Q of the Act are hereby setaside and the matter is remanded for reconsideration by the commissioner after giving due opportunity to the appellant to plead it's stand. The commissioner is also directed to give finding on the mensrea of the establishment for the delayed remittance, in case it is found liable for damage and pass a speaking order. Since, it is a composite order, the finding with regard to the interest is also set aside and the commissioner is directed to dispose of the matter strictly within three months from the date of receipt of the order.

Sd/-

(Pranita Mohanty)
(Presiding Officer)