

**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-1/33/2018

M/s Delhi State Civil Supplies Corporation Ltd.,	Appellant
Vs.	
APFC- Delhi-North & Others	Respondent

ORDER DATED:-15.11.2021

Present:- Shri Raj Birbal & Ravi Birbal, Ld. Counsel for the Appellant.
Ms. Karishma Proxy Counsel for Respondent No.1.
Shri Inderjeet Singh, Ld. Counsel for the Respondent No. 2.
None for the Respondent No. 3&4.
Shri S.N Mahanta Ld. Counsel for the Respondent No.5

This order deals with the 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 petitions being served on the respondent, learned counsels for the respondent no 1, 2 and 5 appeared and participated in the hearing held through video conferencing on 8/11/2021. Reply to the appeal has already been filed by the Respondent no 2.The record reveals that the order u/s 7A was passed by the commissioner on 6.9.2018 and the appellant filed the appeal on 23.10.18.Hence the appeal has been filed within the prescribed period of limitation.

The petition filed by the appellant along with the appeal is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. This petition was earlier considered by this Tribunal and disposed of by order dated 10.1.19 directing the appellant to deposit 50% of Rs 9,47,05,624/- which was considered to be the balance unpaid amount of the assessed amount i.e Rs 12,82,92,714/-. That order being challenged by the appellant in WPC No 3359/2019, The Hon’ble High Court of Delhi by order dated 26.9.2019, set aside the order dated 10.01.19, of this Tribunal and remanded back for reconsideration of the application filed by the appellant u/s 7O of the Act. While remanding the matter The Hon’ble Court

directed the appellant to deposit 10% of the assessed amount as an interim measure before the 7O application is taken up by this Tribunal for reconsideration.

The learned counsel for the appellant submitted that the appellant has complied the direction by depositing Rs 94,70,563/- and the same is not disputed by the Respondent no 5. Ms Birbal, the learned counsel for the appellant submitted that impugned inquiry was initiated on the basis of the complaints made by some labour unions against the appellant which is a Government Corporation registered under the Companies Act with the objective of securing stability in price and making available essential commodities at reasonable price through Fair Price Shops. For executing the work the appellant engages transport contractors through e-Tender. As per the term of contract, the contractor bears the responsibility under the Factories Act, ESI Act, EPF Act etc. on several occasions the contractors were impressed upon to comply the statutory obligation towards the labours employed to which they replied that the labourers were being engaged by FCI for loading and unloading and not by the contractors. While the matter stood thus, initially summon was served on the appellant for inquiry u/s 7A of the Act for the period Jan 2009 to Aug 2009. But on the report of the EO the commissioner made the assessment from 1984 to 2009 covering a period of 25 years. This belated assessment was made solely on the basis of the complaints of the labour union and report of the EO. All the submissions made by the appellant establishment that it is not the employer and the principal employer in some cases the contractor and in other cases the FCI was not considered at all while passing the order.

Citing various judgments of the Hon'ble High court of Delhi and Hon'ble High Court of Andhra Pradesh, wherein it has been held that the drivers and cleaners engaged in the vehicle hired can not be treated as employees of the establishment hiring, she submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the objection raised by the appellant which is a Government Corporation. She also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. All these aspects if would be considered, the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue

hardship to the appellant during this difficult time when a substantial amount of the assessed amount has already been deposited and another 10% was deposited by the order of the Hon'ble High Court. She there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. She also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country and a Government Corporation, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent no5 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. He also added that the deposit made by the appellant by the order of the Hon'ble Court is not towards compliance of 7O, but as an interim measure before hearing of the 7O application.

The learned counsel for R2 only insisted for early hearing of the appeal considering the long period the inquiry was held.

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. There is no dispute on the facts that assessment has been made for a very long period i.e 25 years and it has been alleged that the remittance for this period was defaulted.. At the same time it need to be considered that the amount assessed is 12,82,92,714/- out of which a part has been paid and Rs9,47,05,624/- was out standing when the impugned order was passed. Again for the order passed by the Hon'ble high court Rs 94,70,563 /- has been admittedly deposited.

Without going to the other details as pointed out by the appellant for 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 extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of Mulchand Yadav and another .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 as has been held by the Apex court in the case of

Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484 that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt 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%. In this case the appellant has already deposited Rs3,35,87,090/- before passing of the impugned order assessing 12,82,92,714/- and by the order of the Hon'ble Court deposited Rs94,70,563/- and the amounts taken together is close to 30% of the assessed amount. Hence the appellant shall not deposit any more amount towards compliance of the provisions of sec 7-O of the Act. Hence, the appeal is admitted and there would be stay on execution of the impugned order till disposal of the appeal. Call the matter on 07.02.2022 for reply by the respondents contesting the appeal.

Presiding Officer