

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-2, MUMBAI**

**APPEAL NO. CGIT- 2 / EPFA / 85 /2022**

**Between:**

M/s. Dilkap research Institute of Engineering  
and Management Studies,

- APPELLANT

V/s.

Assistant Provident Fund Commissioner,

- RESPONDENT

**ORDER**

**(Delivered on 28-05-2024)**

The Appellant has challenged the order dated 22-09-2022, passed under section 7A of The Employees Provident Fund and Miscellaneous Provisions Act 1952 ( herein-after referred as "the said act" ) and by these applications the appellant / applicant prays for waiver from depositing the amount required under section 7-O of the said act and also for staying the effect and operation of the order dated 22-09-2022, during pendency of lis.

It is contended on behalf of the appellant / applicant that the order under appeal is totally based on balance sheets and Profit and Loss accounts. The authority considered the excluded employees for coverage. There was no document on record before the authority to show that, person's receiving amount are the employees. The authority has no power to consider 50% amount as wages nor there was any necessity to consider the Profit and Loss account for determining the amount. It is further contended that, the contractor was not made a party to the proceedings before authority. The order under appeal shows the names of unidentifiable addresses of the contractor's employee however there was no identification of the employees as such the order under appeal is not in accordance with the law.



He put his reliance on various decisions in Builders Associations of India Vs. Union of India Supreme Court, Sandeep Dwellers Pvt. Ltd. Vs. Union of India (UOI) MANU / MH / 1175 / 2006 Bombay High Court, writ petition no. 1674 / 2016 Kaushik K. Chattarjee Engineers and Contractors Vs. Assistant Provident Fund Commissioner; Lokeshore Hospital and Research Centre Ltd. Vs. EPF Appellate Tribunal ( Kerala High Court ) MANU / KE / 0877 / 2013, Assistant PF Commissioner and others Vs. Shri Krishna Polyurethane Industries Pvt. Ltd. MANU / DE / 0656 /2020 and Central Board of Trustees (EPFO) Vs. Era Infra Engineering Ltd. MANU / DE / 1973 / 2022;

As against this, It is submitted on behalf of the respondent opponent that, the amount ascertained by the authority in the order, under appeal is based on evidence and documents available on record. The same has been passed with due regard to the process of Law and the principles of natural Justice. An ample opportunity was granted to the appellant / applicant to submit the documentary evidence but he failed. The documents tendered by appellant / applicant has been duly scrutinized and the authority acted within the powers and ascertained the amount, as such there is no illegality as alleged. It is further submitted that, there is no adequate or cogent reason for waving the amount nor staying the recovery and ultimately prayed for the rejection of the applications. The reliance has been placed on various decisions mentioned in the reply.

I have given anxious consideration to the oral submissions advance on behalf of both the parties, in the light of a copy of order dated 22-09-2022 under appeal. It reveals that the enquiry under section 7-A of the said act, was conducted against the appellant / applicant during 18-10-2018 to 11-08-2022 and in between the various dates mostly the representative of the appellant / applicant was present personally as well as virtually. The authority also directed the establishment i.e. appellant / applicant to represent by authorised representative. It goes to show at this Prima facie stage that the enquiry under section 7-A of the said act has been conducted in proper manner and not in violation of the principles of the natural justice.

Much is argued on behalf of the appellant / applicant about the reliance on balance sheets and Profit and Loss accounts by the authority. There was



no identification of employees, the contractor was not made party to the proceedings of enquiry and amount received by the contractor, are not wages. True it is that, these points are very much vital and important, requires detail consideration and can be considered while deciding the legality of order dated 22-09-2022 under challenge on merit.

I have gone through the various decisions relied on behalf of the appellant / applicant. It has been observed by the Apex Court of the Land that, the process of identification of the employees engaged by the employer or contractor arose only in the stage of the enquiry. Similarly, Our Bombay High Court also laid down in the decision relied by the appellant / applicant that dues under section 7-A cannot be on the basis of specific percentage of charges paid to the contractor and liability can be fixed only after identifying the workmen or employees. There cannot be any second opinion about these observations of the superior courts discuss above, however, in my opinion is these aspect can be considered while deciding the appeal on the merit, still in the light of these points / grounds raised by the appellant in appeal certainly needs consideration. Therefore, it can be safely said that, the appellant has made out a Prima facie case and entitled to the stay the effect and operation of the order under appeal.

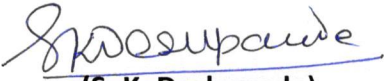
As regards the waiver from depositing the 75% amount, as per section 7-O of the said act, the appeal shall not be entertained unless the appellant has deposited 75% amount due from him as determined in the enquiry under section 7-A of the said act. It has been laid down by the superior court that, pre deposit of the amount is the rule and waiver of such deposit is an exception. Similarly, It has been also laid down that, undue hardship and imposition of condition to safeguard interest of revenue are relevant factors.

In the case in hand, I have observed earlier that, the appellant / applicant has made out a prima facie case and considering the amount involved in the order and under appeal i.e. Rs. 2,02,31,934/- as well as hardship likely to cause due to deposit of 75% amount, in my opinion it will be just to direct the appellant / applicant to deposit the amount of 40% instead of 75% as such the application for waiver is partly allowed.



In view of the above discussion, the application for waiver as well as application for stay is disposed off by directing 40% amount of Rs. 2,02,31,934/- with the respondent / opponent within 4 weeks from the date of this order and Recovery of remaining amount shall remains stayed during pendency of the present appeal.

Dated: 28-05-2024

  
**(S. K. Deshpande)**  
**Presiding Officer**  
**CGIT-2, Mumbai**