

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

APPEAL NO. D-1/23/2020

M/s. E-Horizons Softtech Pvt.Ltd. Appellant

Through:- ShriV.K. Sharma, Ld. Counsel for the Appellant.

Vs.

APFC, Delhi(South) Respondent

Through:- Shri B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED 28.12.2020

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 both the petitions being served on the respondent, learned counsel Shri B B Pradhan appeared and participated in the hearing held 23.12.2020 through video conferencing and written objection were filed to the 7O and delay condonation petitions of the appellant. Perusal of the office note reveals that the impugned order was passed on 16.05.2019 by the APFC, Delhi, and the appeal was filed on 19.9.2019. The office has pointed out about the delay in filing of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of limitation in view of the review order passed on 01.08.2019. He also submitted that the delay was never intentional but for the pendency of the review petition before the commissioner. He thus submitted for condonation of delay and admission of the appeal pleading that the appeal involves valuable rights of the appellant and if would not be admitted serious prejudice shall be suffered by the establishment.

The learned counsel for the respondent has raised several objections in the reply filed by him to the delay condonation petition. During course of argument he submitted that the lack of diligence on the part of the appellant is evident from it's pleadings and the impugned orders. He went on clarifying that the order u/s 7 A was passed on 16.05.2019. the establishment being aware of the provisions of Rule 7 had preferred the review after the time stipulated under the Rule with the sole intention

of avoiding execution of the order, which was ultimately rejected as barred by limitation only. Citing the judgement of the Hon'ble High Court of Delhi, in the case of Saint Soldier Modern Sr Secondary School vs RPF, 2014(18)SCT609, he submitted that the EPF & MP Act being a special legislation prescribing time limit for filing appeal, the Tribunal can not extend the limitation beyond 120 days and the appeal being hopelessly barred by time deserves to be dismissed on that ground only. But the submissions made by the learned counsels for both the parties lead to show that the review petition was dismissed on 1.8.19, for whatever the reason may be and the appeal was presented on 19.9.19, i.e. within the prescribed period of limitation. A party to a litigation can not be punished by way of depriving him of his legal rights for any fault committed in conduct of the case. Hence the petition for condonation of delay is allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without identifying the beneficiaries. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was initially with regard to non remittance of PF dues on the basic wages of the employees. On production and verification of documents the Area Enforcement Officer submitted a report indicating that the contribution has been omitted to be paid on the charged employee benefit charges, professional charges, Repair and Maintenance charges etc. accordingly the assessment was made. For doing so he solely relied upon the report of the Area Enforcement Officer, which does not reveal whether basic salary or gross salary of the employees were taken into consideration for the purpose. Though the authorized representative of the establishment was attending the proceeding regularly and had produced all the documents demanded by the DR and also explained that the EPF contribution has been properly made on the basic salary, the commissioner did not consider the same and by way of a mathematical calculation based on the report of the Area Enforcement Officer passed the impugned order. The learned counsel for the appellant went on to submit that the commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the demand for the documents forming basis of the calculation. To support his submission he placed reliance in the case of Small Gauges Ltd & Others VS V P Ramlal APFC decided by the Hon'ble High Court of Bombay, wherein it has been

held that unless the documents deposition and calculation forming basis of the order are made available to the establishment it can not be said that the basic tenets of the principle of audi alteram partem was followed. He also placed reliance in the case of Kranti Associates to submit that the commissioner can not pass the order on the basis of mathematical calculation as if Tax is assessed, without identifying the beneficiaries.. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. 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 the commercial activities are encountering huge loss. He 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. He also submitted that the appellant is a registered company having least chance of running away from the reach of Law and at the end of the hearing of the appeal, if the amount assessed is found payable, it will be paid.

In reply the learned counsel for the respondent, 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. Learned counsel Mr Pradhan also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt Ltd VS RPF C , to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

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 the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 10/2012 to 4/2016, and the amount assessed is Rs.71,19,168/-.There is no mention in the order about the basis of the calculation arrived at. Without going to the other detail as pointed out by the appellant 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 pass an order, taking into consideration the period of default ,the amount assessed and the prevailing circumstances on account of the out break of COVID -19. However , 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 40%. Accordingly the appellant is directed to deposit Rs 28,47,667/- which is 40% of the assessed amount within 4 weeks from the date of this order towards compliance of the provisions of section 7-O of the Act by way of FDR in the name of "Registrar CGIT" initially for a period of one year having provision for auto renewal thereafter. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal and the Bank account No. 175500C100000017 maintained with Punjab national Bank, K-91, Lajpat Nagar, New Delhi of the appellant attached by the respondent shall be de-attached for the purpose of compliance of this order . Liberty is granted to the respondent to act according to law and attach the account, if the this order is not complied by the appellant within the time stipulated in the order. List the matter on 01 February, 2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-

Presiding Officer