

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice Ananda Kumar Mukherjee (Retd.),
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 01 of 2023

Amit Metaliks Limited. Appellant

Vs.

Assistant Provident Fund Commissioner, Durgapur Respondent

For the Appellant : Ms. Taniska Khandelwal, learned advocate.

For the Respondent : Mrs. Mousumi Ganguli, learned advocate.

Dated : 30th March, 2023

Appellant's petition dated 09.02.2023 is fixed up today for hearing. In their application appellant has prayed for condonation of delay in filing the appeal. Ms. Taniska Khandelwal, learned advocate has appeared for the petitioner / appellant.

Mrs. Mousumi Ganguli, learned advocate for the respondent / opposite party filed written objection on 16.03.2023 against the application for condonation of delay and has relied upon some case decisions. Mrs. Ganguli strongly pressed for rejecting the application for condonation of delay on the ground that there is a delay of three hundred and sixty (360) days in filing this appeal before the jurisdictional Forum and the application has not been supported by an affidavit nor by a proper verification and that the same does not

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disclose any date or place of verification of those statements. It is argued that Rule 7(2) of the Tribunal (Procedure) Rules, 1997 provide that an appeal should be filed within sixty (60) days and for sufficient reasons to be recorded the Tribunal may extend this time by another sixty (60) days but under no circumstance an appeal should be admitted after the laps of one hundred twenty (120) days.

Learned advocate in support of her argument relied upon the decision of the Hon'ble High Court of Jharkhand at Ranchi in the case of **M/s. Nagarmal Modi Seva Sadan vs Employees' Provident Fund Organization, Ranchi and two others (L.P.A. No. 893 of 2019)**, wherein it was laid down in paragraph 20: *“ that the period of limitation cannot be extended otherwise the same would be contrary to the statutory provision as provided under Rule 7 of Tribunal (Procedure) Rules, 1997, therefore, the said prayer is rejected, the issue of applicability of limitation in EPF Act, 1952 has already been decided as would be evident from the judgment rendered in the case of Saint Soldier Modern Senior Secondary School Vs. Regional Provident Fund Commissioner, reported in 2014 (142) FLR 730 (Del.H.C.), wherein it has been laid down that there was no such power with the Appellate Tribunal. The observations made in the judgment are as follows:*

“ 8. A perusal of the section 7-I of the Act and Rule 7 of the Rules would reveal that the time period for filing an appeal is within 60 days from the date of issue of the notification/order, provided, the Tribunal, if satisfied that for certain sufficient cause, the appeal could not be preferred within the period of 60 days, then, the period to file appeal can be extended to 60 days thereafter. Suffice to state, the provision does not vest any power with the Tribunal to condone a delay beyond that period...” ”

Learned advocate for the respondent further relied upon a decision of Hon'ble Orissa High Court, in the case of **M/s. Lotus Chemicals Pvt. Ltd. vs Assistant Provident Fund Commissioner, (Compl.) Rourkela (2018 (157) FLR 440)**, wherein it was held that:

“ 8. The procedure for filing of appeal has been provided under the provision of Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, wherein it has been provided under Regulation 7(2) that the appeal may be filed within 60 days from the date of issuance of notification/order, provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring appeal within the prescribed period, may extend the said period by a further period of 60 days, meaning thereby the appeal is to be filed before the appellate Tribunal within a maximum period of 120 days subject to its condonation and beyond that it cannot be extended. ”

Learned advocate for the petitioner / appellant submitted that on the basis of order dated 29.03.2022 of the Hon'ble High Court, Calcutta, passed in WPA 5089 of 2022 an appeal was preferred before the Provident Fund Appellate Forum but initially it was filed before a wrong forum i.e. CGIT-cum-LC, Kolkata on 13.04.2022 and thereafter as directed in order dated 08.09.2022 passed by the Presiding Officer at CGIT-cum-LC, Kolkata, the Memorandum of Appeal was returned to the Appellant for filing the appeal before the proper Forum. Learned advocate further submitted that the appellant has deposited Rs. 17,04,560/- (Rupees seventeen lakh four thousand five hundred and sixty only), the statutory deposit amount through challan on 07.04.2022 and produced the challan before the Hon'ble High Court in compliance with the statutory obligation of depositing 75% (seventy-five percent) of the alleged dues under Section 7-A of Employees'

Provident Funds and Miscellaneous Provisions Act, 1952. It is therefore prayed that the delay in filing the appeal at CGIT-cum-LC, Asansol may be condoned and admit the appeal.

Having consider the submissions made by learned advocate for the Appellant and the Respondent as well as the sequence of proceedings, through filing of Writ Petition and thereafter an Appeal before CGIT-cum-LC, Kolkata, it is evident that the Appellant tried to vindicate their cause by preferring the Appeal against impugned order dated 30.09.2015, passed by the Opposite Party / Respondent. Negligence on the part of the Appellant looms large from the fact that after the order passed by the Hon'ble High Court on 29.03.2022, appellant did not file the appeal before the appropriate Forum within a fortnight (fourteen days) and filed an Appeal before wrong Forum immediately after expiry of the time limit. The Appellant did not seek extension of time before the Hon'ble High Court for filing of the appeal. It appears to me that after discovering the fact that the Appeal was preferred before a wrong Forum i.e. the CGIT-cum-LC, Kolkata, on 08.09.2022 the Presiding Officer of CGIT-cum-LC, Kolkata passed an order for return of the Memorandum of Appeal. The Appellant received back the original Memorandum of Appeal on 20.09.2022 after further delay of twelve (12) days through Ms. Sanchari Chakroborty without any explanation of delay but they have approached this Tribunal, the Appellate Forum and filed the appeal on 09.02.2023. The Appellant has exceeded the statutory period of limitation and did not care to present the Appeal before the CGIT-cum-LC, Asansol within the statutory period after receiving back of the Memorandum of Appeal. No reason has been assigned for the inordinate delay of one hundred fifty-three (153) days in filing the appeal after passing of order by CGIT, Kolkata.

It also appears that the Appellant did not support their application for condonation of delay with proper verification or affidavit.

In this connection it is worthwhile to note that the provisions of the Limitation Act do not apply to the appeal filed under Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The statutory period for filing has to be followed. Therefore, I hold that ratio of the decisions relied upon by learned advocate for the respondent fortifies their objection against condonation of delay. It is a settled principle of law that the Tribunal is not vested with the power to condone the delay beyond one hundred and twenty (120) days.

In view of the facts and circumstances the application for condonation of delay and admitting the appeal stands rejected on contest.

Sd/-
(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.