

19/11/2020

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

M/s. Vipin Shah and Associates ... Appellant

Vs

Assistant Provident Fund Commissioner ... Respondent

Thane

Presence:

For the Appellant : Mr.H.L.Chheda,
Authorized Representative

For the Respondent : Mr.Ravi Ratheesar, Adv.

ORDER

1. The present appeal is filed by the appellant under section 7(l) of the EPF & MP Act, 1952 (hereinafter referred to as 'Act') against the order dated 03.03.2020 passed by the Assistant Provident Fund Commissioner, the Respondent under section 7 A of the Act.
2. The appellant has filed application for waiver of deposit under proviso to Section 7- O of the P.F.Act.
3. The appellant has filed condonation of delay application.
4. At the time of hearing, learned counsel for the respondent Mr.Ravi Ratheesar has not opposed the condonation of delay application. Perusal of the application for condonation of delay reveals that sufficient cause has been mentioned in the



application. According to the verdict of Hon'ble Apex Court, due to the special circumstances of the pandemic COVID-19, delay condonation application is allowed.

5. The Ld. Advocate appearing for the Respondent has referred to Section 2(f) of the EPF & MP Act, 1952 wherein the definition of Employee includes any person engaged or employed through Contractor. Further it was submitted that Section 6 of the Act, provides for contribution to be paid by Employer to the fund in respect of the Employees, whether paid directly or through a Contractor.

6. It was further submitted that Para 36 of the Scheme provides for the duties of the Employer which states that every employer shall send to the Commissioner within 15 days of the commencement of the scheme a consolidated return in such form as the Commissioner may specify. And every employer shall send to Commissioner within 15 days of the close of each month a return of the Employees qualifying to become the members of the Fund.

7. Para 36-B of the Scheme provides duties of the Contractor being that Every Contractor shall within Seven days of the close of every month submit to the principal employer a statement showing the recoveries of contributions in respect of the employees employed by or through him and shall also furnish to him such information as the principal employer is required to furnish under the provisions of the Scheme to the Commissioner.

8. It was stated by the Advocate for the Respondent that the Appellant as Employer has failed to comply its duty as provided under the Act and under the Scheme. Thus has failed to give the entire list and details of its own Employees and employees employed by the Appellant through Contractors.

9. Though it is undisputed that as per Section 6 read with para 30, para 36 and 36B of the EPF & MP Act and EPF Scheme of 1952 it is the duty of the principal employer to maintain records of the Employees as well as Contractor employees and to ensure PF compliance in respect of all eligible employees.

10. It was the responsibility of the Principal Employer to pay the Provident Fund of Contract Employee or produce the compliance status of contractor if separately covered under the Act.

11. The Establishment failed to produce the records related to labour charges booked in balance sheet. Even after lapse of 13 years the Appellant Establishment has failed to submit records. Hence, the Appellant does not have a prima facie case for waiver of pre deposit of the dues.

12. As per Section 7-O of the EPF & MP Act, the Appellant is liable to deposit 75% of the amount due as determined under Section 7A proceedings and stated in the Impugned Order dated 03.03.2020.

13. The Appellant submitted that the subject matter of the order passed under Section 7A (1)(b) of the EPF&MP Act, 1952 against which the redressal sought is within the jurisdiction of the Hon'ble Central Government Industrial Tribunal. The Respondent alleged that the appellant has not rendered compliance for the period from 01/2005 to 12/2010 illogically and illegally ignored the written as well as oral submissions made by the appellant in the enquiry proceedings. The Appellant further submitted that the persons deployed by the independent individual contract establishments that serve the multiples simultaneously on contract for services who were unidentified by the prosecution as well as the respondent commissioner and the contract establishments were seldom made party to the ongoing enquiry proceedings even after the appellant made written request to the respondent commissioner. It is not known whether the alleged employees that were deployed by the contract establishments for the enquiry period to the appellant are still in the service of the contract establishment or not? The excluded employees salary and wages has been considered for assessment of provident fund commissioner.

The appellant submitted that a combined reading of the enacted legislation made under the Act & Scheme, if considered, shall be as follows:

- (i) The employer that employed employees in relation to the business activities in or in connection with the work of the establishment, in case directly

employed by him is required to remit both shares of provident fund contributions to the Fund together with the administrative charges as applicable and thereafter recover the employees share of provident fund contributions from the salaries/wages of the employees/workers.

- (ii) To read with para 36B is required to depend upon the contractor who is disbursing salary/wages to the employees employed by him is required to deduct/recover the contribution payable by such employee and shall pay to the employer the amount of members contribution so deducted together with an equal amount of contribution and also administrative charges and submit within seven days of the close of every month.

14. Heard both parties.

15. After considering the entire facts and circumstances as well as submissions made by both the parties, the impugned order has been passed under Section 7-A and in view of the provisions of the Section 7-O, the appeal should not be entertained unless the appellant deposited 75% of the amount due so far as the arguments taken by the establishment with regard to the inclusion of the personal allowances. It has to be considered at the time of personal hearing of the appeal on merits. At this stage, as per mandatory provisions the appellant has to deposit 75% of the assessed amount which can be reduced or modified to some extent on the basis of prima facie case and balance of convenience.

16. Considering the appellant case, I find it proper to reduce the amount and the appellant can be directed to deposit 25% of the assessed amount. On depositing 25% of the assessed amount to the respondent within 6 weeks from the date of order, the impugned order is stayed. This is pre-condition for staying the impugned order and for entertaining the appeal. Hence order.

17. In view of the above, I pass the following order.

- (i) Appeal is admitted.

(ii) Appellant is directed to deposit 25% of the assessed amount within 6 weeks and on depositing the 25% of the assessed amount impugned order is stayed till further orders.

(iii) On depositing the 25% of the assessed amount the respondent is directed not to take coercive steps till further orders.

Fix on 18.2.2021 for filing reply against Memo of Appeal.


(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER

