

CGIT-1/EPFA/25 OF 2022

~~07/9/2022~~ 7/9/2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt. Pranita Mohanty
Presiding Officer

M/s. Tytan Organics Pvt. Ltd.

... Appellant

Vs

Assistant Provident Fund Commissioner
Vashi

... Respondent

Presence:

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

For the Respondent : Absent.

ORDER

The appeal challenges the order dt07/02/2022, passed by the APFC Vashi u/s 14B 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 18,76,600/ and Rs 9,13,617/-, towards damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 07/2015 to 09/2018. Notice though served on the respondent, no one appeared and participated in the hearing held on 6th Sept 2022.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 07/02/2022 and the appeal has been filed on 30/03/2022 i.e within the period of limitation.

A separate petition has been filed by the appellant praying an interim order of stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner had failed to appreciate the mitigating circumstances pointed out during the inquiry. It has also been stated that the establishment was diligent in deposit of EPF contribution in respect of it's employees until it became a victim of fraud in the business to a tune of 25 cr. To stabilize the business it had to incur huge bank loans. When the establishment was struggling to restore stability, the commissioner issued the notice of inquiry. The appellant appeared through it's AR and as a law abiding business establishment admitted the delay in remittance of the PF contribution. But at the same time the mitigating circumstances were explained and the AR of the establishment undertook to deposit the interest component of the demand. But the commissioner took a wrong view of the matter and accepted the same as admission of the establishment qua the damage and interest proposed in the notice. The commissioner a quasi judicial authority without making further inquiry and without assigning reason for rejecting the mitigating circumstances pointed out, passed a non speaking and cryptic order imposing damage and interest. Though two separate orders have

been passed the same are the out come of a common proceeding. Hence the appellant has prayed for admission of the appeal in respect of both the orders and grant of interim stay in respect of the said orders pending disposal of the appeal.

The appellant has placed documents on record to show that a massive fraud had happened in the business of the appellant during the period for which the inquiry was held. The impugned order nowhere deals with the submission of the establishment with regard to the reason for delay. The commissioner in a hyper technical manner took the submission as admission and passed the impugned order. All these aspects when taken into consideration, makes out a strong arguable case for the appellant. On hearing the submission made by the appellant, a decision is to be taken on the relief of stay as prayed for. The factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi) the Hon'ble High court of Delhi have held

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over almost 3 years though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the amount deposited belatedly is not intentional but for a situation beyond the control of the appellant.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit a nominal amount i.e. 20% of the assessed damage as a pre condition for grant of stay within 6 weeks from the date of communication of the order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant by way of Challan Call the matter 05/12/2022 for compliance of this direction.

The appeal is admitted. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. But there would be no stay on the order passed u/s 7Q of the Act challenged in this appeal.

PRESIDING OFFICER

CGIT-1 MUMBAI