

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty
Presiding Officer

Trig Facility Services ... Appellant
Vs

Assistant Provident Fund Commissioner ... Respondent
Bandra

Presence:

For the Appellant : Mr. P.M.Bhagat, Adv.

For the Respondent : Absent.

ORDER

The appeal challenges order dt 27/12 2021 passed by the APFC Bandra u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 4,61,472/-for delayed remittance of EPF dues of it's employees for the period09/2009 to 03/2016.

Notice though sent to the respondent on 12/08/2022 by regd. post, none appeared to participate in the hearing resisting the

prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 27/12/2021 and the appeal was filed on 04/08/2022, i.e beyond the period of limitation. Thus the Registry has pointed out the delay in filing the appeal. The appellant by filing an application for condonation of delay has pleaded that the establishment was attending the hearing before the commissioner till 9/4/2020. After that all the activities were suspended on account of declaration of lock down for out break of covid 19. The appellant was waiting for the intimation on the date of hearing after lifting of lock down. But the commissioner in the mean time held inquiry and concluded the same behind it's back. The appellant could know about the impugned order when the recovery notice was served. Being advised by the consultant the interest calculated was deposited. On being requested the appellant was provided with a copy of the impugned order on 8/6/2022 and soon there after the appeal was filed. Thus the appeal has been filed within the prescribed period of limitation from the date of the knowledge. In absence of proof to the contrary this Tribunal finds no reason for rejecting the said submission of the appellant . more over the impugned order was passed when

after lifting of the lock down activities in all sectors were resuming normalcy gradually and keeping situation in view the Hon'ble SC in suo motto WPC No 3/2020 have granted extension of limitation up to 28th Feb 2022. In view of the situation and explanation offered the delay is condoned. There being no other defect the appeal is admitted.

The appellant has stated that the impugned order is illegal, arbitrary and out come of a mechanical approach of the facts. He also submitted that the AR of the establishment had made a detail submission during inquiry which was not considered at all. More over a dispute was raised with regard to the actual date of deposit and the date considered for calculation of damage. But the same has not been addressed in the order. Hence the appellant argued that it strong arguable case in the appeal. If execution of the order would not be stayed, the relief sought for would become illusory and prejudice shall be caused.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate . The only factor which drove the commissioner for passing the impugned order is the non appearance of the establishment during the inquiry.

On hearing the submission made by the counsel 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 six years and the inquiry was initiated after a long period.

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 passed u/s 14B of the Act, 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 30 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within four weeks from

the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. Call the matter 09/12/22 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the compliance is made.

PRESIDING OFFICER

CGIT-1 MUMBAI