

CGIT-1/EPFA-09 of 2020

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI

Date: 19.11.2020

M/S. OM CONSULTING

MUMBAI

APPELLANT

V/s.

ASSISTANT PROVIDENT FUND COMMISSIONER

THANE

RESPONDENT

ORDER

Mr.H.L.Chheda, Authorized Representative for the Appellant is present.

Mrs. Prerna Jhanvekar, Adv present for the Respondent.

The matter was held through video conferencing.

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 31.12.2019 passed by the Regional Provident Fund Commissioner, the Respondent under section 14B of the Act.

Along with appeal appellant has filed application for waiver of deposit us 7-0 of the Act.

An application for condonation of delay has also been filed by the appellant.

Copies have already been furnished to the respondents.

Learned counsel for the appellant submitted that the Assistant Provident Fund Commissioner has passed an impugned order under Section 14-B dated 31.12.2019 for an amount of Rs.6,74,221/-Learned counsel for the appellant



further submitted that the appeal is directed against an erroneous and unsustainable action of the Assistant Provident Fund Commissioner (APFC), Thane that passed an order jointly under Sections 14B of the EPF & MP Act, 1952. The APFC has ignored the verdicts of the Hon'ble Courts that has settled the law that, for belated remittances of PF dues liability to pay the damages does not arise automatically, but the same will have to be decided by the PF authorities by applying mind to the merits of the case. The respondent has mechanically imposed the penal damages. The appellant prayed to quash the impugned order.

Learned counsel for the respondent while supporting the impugned order submitted that all the grounds taken by the appellant including the jurisdictional grounds are open for consideration during the regular hearing of the appeal. The EPF & MP Act is a beneficial legislation and aims at the benefit of the employees. Any order or stay of the impugned order would defeat the very purpose of the legislation.

At the time of hearing, learned counsel for the respondent Mrs. Purna Jhanvekar 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.

So far as application for stay is concerned, I have gone through the contentions raised by both the parties. The total amount of penal damage is Rs 6,74,221/-



With regard to the application for waiver of deposit under proviso to section 7-0 of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 14-B dated 31.12.2019 and has levied penal damages of Rs.6,74,221/- without considering the mitigating circumstances. The appellant states that the impugned order is neither a speaking nor a reasoned order as the penal damages were levied by the respondent commissioner mechanically in most cursory manner. He also submitted that the balance of convenience is also in favour of the Appellant. In this case, the damages levied is Rs.6,74,221/- Moreover, appellant has disputed the same on the various grounds mentioned in appeal and waiver applications. All these aspects no doubt makes it a strong arguable case for the appellant. If there would not be stay on the execution of the impugned order certainly that could cause undue hardship to the appellant. At the same time, it is held that the stay shall not be unconditional and it is in these facts and circumstances, it is directed that the appellant shall deposit nominal amount i.e. 10% of the assessed damages as pre-condition for grant of stay within one month from the date of communication of the order failing which there would be no stay order.

It is made clear that the order passed separately u/s 7Q of the Act not being appealable shall not be affected by this interim order of stay.

I hereby pass the following order.

- (i) Appeal is admitted.
- (ii) Appellant is directed to deposit 10% of the assessed amount with the respondent within one month from the date of order.



- (iii) On depositing 10% of the assessed amount with the respondent within one month from the date of order, the impugned order is stayed.
- (iv) The respondent is directed not to take coercive steps till further orders.

18.02.2021 for reply over Appeal.



  
(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER