

CGIT-1/EPFA/19 of 2022

31.10.2022

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**

MUMBAI

Present

Smt.Pranita Mohanty  
Presiding Officer

M/s. Fouress Engineering (I) Ltd ... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent  
Bandra

**Presence:**

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

.For the Respondent : Mr. Ravi Rattesar, Adv.

**ORDER**

The appeal challenges the orders dt 10/01/2022 passed by the RPFC, Bandra, u/s 14B and 7Q of the EPF&MP Act communicated on 17.01.2022, wherein the appellant has been directed to deposit Rs 1,40,413 /- and Rs 1,13,662/- as damage for delayed remittance of EPF dues of its employees for the period 01.04.2010 to 31.03.2012.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held on 27.10.2022 through VC, 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 and communicated to the establishment on 17/01/2022 and the appeal was filed on 22/02/2022, i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and passed after a composite proceeding held, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was also common. The learned AR for the appellant submitted that the appellant is a private Ltd Company duly registered under the Companies Act and engaged in manufacturing of general Engineering parts used in other machines and equipment. Since the date of coverage, it has been diligent in remittance of the PF dues of it's employees. A notice, along with a calculation sheet of damage and interest was received by the appellant for the inquiry u/s 14 B. In response there to, the AR for the establishment appeared and by filing written submission and supported by documents, pleaded that the establishment has already deposited the Provident Fund contribution of the employees and the delay in remittance is not in respect of Account No 1, but for the insurance and administrative charges. It was also pointed out that in the past few years the establishment has

encountered huge financial loss on account of the Global Recession affecting the business activities of all kind of Industries. The report of the CA showing the loss suffered by the company was also placed on record. But the commissioner, never considered the bonafides and the mitigating circumstances pleaded during the inquiry and with a pre occupied mind and following the damage and interest proposed in the notice, passed the impugned order in which he has not given any finding on the mens rea behind the delay and as to why the interest has been imposed at the maximum rate. The other argument advanced is that the impugned inquiry was held after 10 years of the alleged delay, in complete defiance of their own department's circular to initiate and dispose of the proceedings relating to damage within the succeeding three years, when the delay occurred. With this submission, the learned AR for the appellant submitted that the execution of the impugned order be stayed pending disposal of the appeal as the appellant has a strong prima facie case to argue having fare chance of success. If the Respondent would recover the assessed amount during the pendency of the appeal, the relief sought for would become infructuous.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than 10 years, depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the impugned order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed can not be treated as composite order, he submitted that the appeal can not be admitted in respect of the

order passed u/s 7Q of the Act. He also relied upon the interim stay granted by the Hon'ble Division Bench of the High Court of Delhi, on the judgment of the Hon'ble single judge, in the case of Gourav Enterprises, wherein it was held by the later Bench, that two separate orders even though passed u/s 14B and 7Q of the Act would be treated as composite orders if the same are the out come of a composite proceeding. He also drew the attention of this Tribunal to the judgment of the Hon'ble SC in the case of Arcot Textiles in support of his argument. The learned counsel for the respondent thus argued that the appeal challenging the order passed u/s 7Q of the Act being not maintainable be dismissed.

The LCR of the inquiry proceeding is not before the Tribunal now and as such no opinion at this stage can be formed on the composite nature of the proceeding as alleged by the appellant.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when the orders were passed in a mechanical manner without considering the objection taken in the written submission. However uh submitted that the appellant shall deposit the interest amount as calculated in the inquiry.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate . Only factor which drove the commissioner for passing the impugned order is the report of the EO and the delay in remittance. On hearing the submission made by both the counsels , 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 10 years and the Respondent conducted the inquiry after 10 years too. The commissioner has not assigned any reason supporting his finding and how the objection and dispute raised were met.

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 25 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 4 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. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. . Call the matter 02/12/2022 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 next date.

PRESIDING OFFICER  
CGIT-1 MUMBAI