

CGIT-1/EPFA-27 of 2020

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI

Date: 12/11/2020

M/S. SHRI SHAKUNTALA KANTILAL ISHVARLAL

MUMBAI

- APPELLANT

V/s.

ASSISTANT PROVIDENT FUND COMMISSIONER

MUMBAI

- RESPONDENT

ORDER

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

Mrs.Ravi Ratheesar, Adv present for the Respondent.

The matter was held through video conferencing.

The present appeal is filed by the appellant under section 7I of the EPF & MP Act, 1952 [hereinafter referred to as 'Act'] against the order dated 28.02.2020 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 u/s. 7-O 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 impugned order passed by the Respondent was illogical, illegal and fastened the penalties of Rs.11,79,474/-. The appellant submitted that the respondent commissioner functioned in "Dual-Capacity" as prosecutor as well as quasi-judicial authority, which is against the principles of natural justice. The appellant submitted that there was non-application of mind on the part of respondent commissioner while passing the impugned order and passed non-speaking and non-reasoned order and prayed to quash and set aside the impugned order.

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.

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 11,79,474/-.

With regard to the application for waiver of deposit under proviso to section 7-O of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 14-B dated 28.02.2020 and has levied penal damages without issuance of proper notice to the Appellant and ignoring the mitigating circumstances, records of facts available and requesting either to waive or reduce the proposed penal damages as the appellant was not willful defaulter and the actions of the appellant in remitting the monthly provident fund contributions cannot be termed as either mens rea or actus reus. He further submitted that if the waiver is not granted, it will double



jeopardize the Appellant, as the Appellant is victim of arbitrariness and colorful exercise of power by the Respondent. He also submitted that the balance of convenience is also in favour of the Appellant.

In this case, the damages levied is 11,79,474/- Moreover, appellant has disputed the same on the various grounds mentioned in appeal and waiver applications. All these aspects no doubt makes out a strong arguable case for the appellant. If there would not be stay on the execution of the impugned order certainly that would 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.

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



Rep on 05/02/2021 for filing Reply.


(JUSTICE R.N. KARKAR)

PRESIDING OFFICER