

**CGIT-1/EPFA-30 of 2020**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI**

**Date: 18/11/2020**

**M/S. KISH HR SERVICES**

**MUMBAI -**

**V/s.**

**REGIONAL PROVIDENT FUND COMMISSIONER**

**THANE**

**APPELLANT**

**RESPONDENT**

**ORDER**

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

**Mr.Ravi Ratheesar, Adv present for the Respondent.**

**The matter was held through video conferencing. The present appeal is filed by the appellant under section 7-1 of the EPF & MP Act, 1952 [hereinafter referred to as 'Act] against the order dated 19.10.2019 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 u/s. 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 impugned order passed by the Respondent was illogical, illegal and fastened the penalties of Rs.1,39,068/-**



The appellant submitted that the impugned order passed by the respondent commissioner is ex-facie bad in law besides being illogical and requires to be set-aside and quashed in the interest of justice. He submitted that the respondent commissioner has erred by not following the enacted legislation. 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, Mr. Ravi Ratheesar, learned counsel for the respondent has not opposed the delay condonation 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 139,068/-

With regard to the application for waiver of deposit under proviso to section 7-0 of the PF Act, the learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 14B dated 19.12.2019 and has levied penal damages ignoring the mitigating circumstances placed by the appellant during the enquiry proceedings. The respondent commissioner ignored to follow the enacted



legislation and has levied illogically and illegally damages at maximum rates. 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 .

Mr. Ravi Ratheesar, learned counsel for the respondent objected strongly with the application for waiver and prayed that a higher amount be directed to be deposited by the appellant.

In this case, the damages levied is Rs. 1,39,068/- 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.

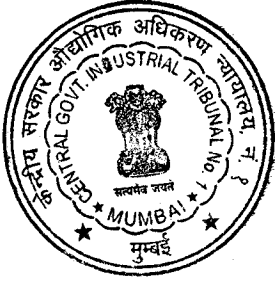
\*Appeal is admitted.

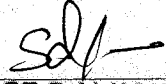
\*Appellant is directed to deposit 10% of the assessed amount with the respondent within one month from the date of order.

\*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.

Fix on...17/2/20.....for reply on memo of Appeal.



  
(JUSTICE R.N. KAKKAR)  
PRESIDING OFFICER