

CGIT-1/EPFA/55 of 2022

31.10.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty
Presiding Officer

M/s. Accenture Solution Pvt. Ltd. ... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent
Bandra

Presence:

For the Appellant : Mr.T.Vijaykumar, Adv.

For the Respondent : Mr. Ravi Rattesar, Adv

ORDER

The appeal challenges two separate orders dt 08.08.2022 passed by the RPFC ,RO, Mumbai (Powai) u/s 14B and 7Q of the EPF&MP Act communicated 23.08.2022, wherein the appellant has been directed to deposit Rs 10,61,213/- and Rs 12,93,752/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period Sept 2017 to Aug 2018 i.e for 11 months.

It has been stated that the commissioner,, by notice dt 17th March 2021 issued along with a calculation sheet had called the appellant to appear in the inquiry, and show cause as to why damage and interest shall not be levied for delay in remittance of the PF dues for the period 01.04.2014 to 31.03.2020. The establishment appeared and participated in the inquiry and pointed out about the timely compliance made for the inquiry period except the period between Sept 2017 to Aug 2018. The period of inquiry, in view of the objection raised, was modified. During the course of inquiry, all relevant documents were placed and it was pointed out that since 2016, the appellant establishment is encountering technical and deposit related issues on account of introduction of ECR system. The appellant establishment conducts the recruitment procedure twice in a year and in this process, new employees join and old employees leave the organization , which is an on going process. For the new employees, the establishment is constantly facing the problem of enrolling the employees under the EPF scheme for the technical difficulties in creating their PF Account No. Only for that reason, some times delay had occurred in remittance. But the same is never intentional , but for the Technical problem faced in remittance. All these aspects were pointed out to the commissioner during the inquiry, supported by documents and written submission in this regard was also made. But the commissioner, without considering any of the submissions and the mitigating circumstances, as pointed out, passed the impugned order which is nothing but an order without application of mind and thus illegal. A submission was also made on the compositeness of the orders passed u/s 14B and 7Q of the Act on the ground that a common proceeding was held by the commissioner, but

two separate orders have been passed, to defeat the right of the appellant. Hence, prayer has been made for setting aside the said orders. Along with the appeal, a separate petition has been filed containing the prayer for an interim order of stay on the execution of the impugned orders, pending disposal of the appeal.

Notice being served on the respondent, learned counsel Shri Ravi Rattesar appeared for the respondent and participated in the hearing held through VC on 27.10.2022 and resisted the prayer for grant of stay on the execution of the impugned order. He argued on the maintainability of the appeal in respect of the order passed u/s 7Q of the Act and submitted that two separate orders since have been passed, those can not be construed as composite orders and the appeal challenging the order passed u/s 7Q be dismissed. To support his submission he has relied upon the judgment of the Hon'ble SC in the case of Arcot Textile mills.

Perusal of the record and office note of the Registry reveals that the impugned orders were communicated to the establishment on 23.08.2022 and the appeal has been filed within the prescribed period of limitation. There being no other defect, the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and out come of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the commissioner has not considered the mitigating circumstances and has not given any finding on the mensrea behind the delayed remittance. It

is a very big and established company in India , having least chance of running away from the reach of Law. If on a later date, it is found liable to pay the interest and damage, the same shall be paid. But from the circumstances indicated, it is apparently clear that the appellant has a strong case to argue and unless the execution of the order would be stayed during the pendency of the appeal, serious prejudice shall be caused.

In his reply the learned counsel for the respondent submitted that the order of stay on the execution of the 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 7Q order. He also relied upon the interim stay granted by the Hon'ble Division Bench on the judgment of the Hon'ble High Court of Delhi in the case of Gourav Enterprises, wherein it was held 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. 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

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 delay in remittance.

On hearing the submission made by the counsels for both the parties, it is found in this case that the period of default spans over only 11 months. But the amount of damage levied is more than 10 lakh. The commissioner has not assigned any reason for levying the damage at the highest rate prescribed.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be an interim stay on the execution of the impugned order passed u/s 14B of the Act, pending disposal of the appeal, 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 with EPFO. 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 when two separate orders have ben placed on record. 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 compliance is made.

PRESIDING OFFICER

CGIT-1, MUMBAI