

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE  
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

**APPEAL NO. D-2/17/2020**

M/s. Egelhof Controls India Pvt. Limited Appellant

Through:- Shri Anshul Goel, A/R for the Appellant

Vs.

RPFC Noida Respondent

Through:- Shri S.N. Mahanta, Ld. Counsel for the Respondent.

**ORDER DATED 15.10.2020**

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of both the petitions being served on the respondent, learned counsel Shri S.N. Mahanta appeared and participated in the hearing held on 12.10.2020 through video conferencing, though no written objection was filed. Perusal of the office note reveals that the impugned order was passed on 28.2.2020 by the APFC, Noida, and the appeal was filed on 16.9.2020 via email. The office has pointed out about the delay in filing of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of limitation in view of the order dated 23.03.2020 of the Hon'ble Supreme Court passed in the suomoto writ petition (civil) no 3/2020, and this tribunal can exercise its discretion for extension of the period of limitation. Citing the shutdown of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for a reason beyond the control of the appellant and the same be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded that in the prevailing situation of COVID 19, it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble Supreme Court for condonation of delay. Hence, taking all these aspects into consideration it is held that the delay is not intentional but for a reason beyond the control of the appellant. It is a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble Supreme Court. The petition for condonation of delay is accordingly allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without identifying the beneficiaries. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was initially with regard to international workers to whom allegedly the benefits were not extended. On production and verification of documents the allegation came out as unfounded. The commissioner then converted the inquiry to find out less deposit of PF

contribution by the employer for the period 01/2014 to 04/2018. For doing so he solely relied upon the report of the EO, who had reported that the basic wage has been bifurcated to different allowances and only 40% of the wage paid has been taken into consideration for EPF contribution of the employees. Though, the authorized representative of the establishment was attending the proceeding regularly and had produced all the documents demanded by the DR and also explained that the wage was being paid to the employees on mutual agreement entered during appointment and the allowances paid are not wage payable or paid in general so as to attract the liability for EPF contribution, the commissioner did not consider the same and by way of a mathematical calculation based on the report of the Enforcement Officer passed the impugned order. The learned counsel for the appellant went to submit that the commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the demand for the documents forming basis of the calculation. To support his submission he placed reliance in the case of **Small Gauges Ltd & Others VS V P Ramlal APFC** decided by the Hon'ble High Court of Bombay, wherein it has been held that unless the documents deposition and calculation forming basis of the order are made available to the establishment it cannot be said that the basic tenets of the principle of *audialterampartem* was followed. He also placed reliance in the case of APFC vs M/S Nandalal, decided by the Hon'ble High Court of Patna to submit that the commissioner cannot pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the E.O. only. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time when the commercial activities are encountering huge loss. He, thereby, prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that the appellant is a registered Pvt. Ltd. company having least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the beneficial legislation and insisted for compliance of the provisions of sec 7O by depositing 75% of the assessed amount. Learned counsel Mr. Mahanta also cited the order passed by the Hon'ble High Court of Madras passed in the case of M/S JBM Auto System Pvt Ltd VS RPFC, to submit that the Tribunal cannot grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 01/2014 to 4/2018, and the amount assessed is Rs.3,12,714. There is no mention in the order about the basis of the calculation arrived at. Without going to the other detail pointed out by the appellant challenging the order as arbitrary and at this

stage of admission without making a roving inquiry on the merits of the appeal, it is felt proper to pass an order keeping the principle decided in the case of Small Gaudge Ltd referred supra in view and taking the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances into consideration, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 20%. Accordingly the appellant is directed to deposit Rs62,000/- which is close to 20% of the assessed amount within 3 weeks from the date of this order towards compliance of the provisions of section 7-O of the Act by way FDR in the name of the 'Registrar CGIT' with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. List the matter on 09.11.2020 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-  
Presiding Officer