

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
DELHI-1; ROOM NO 208, ROUSE AVENUE DISTRICT COURT
COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/28/2020

M/s. GAPL Automotive Ltd.

Appellant

Vs.

APFC, Delhi(East)

Respondent

ORDER DATED 30.07.2020

Present: Shri S.K. Gupta, Ld. Counsel for the Appellant

Shri S.N.Mahanta, Ld. Counsel for the Respondent

The appellant has challenged the order passed by the APFC Delhi u/s 14B and 7Q of the EPF and M P Act (here in after referred to as the Act) by which the appellant establishment has been directed to deposit Rs1,39,309 as damage and Rs66,864 as interest for delayed remittance of the EPF dues for the period 4/96 to 3/2014.

Notice being served, learned advocate Shri S.N. Mahanta appeared on behalf of the respondent and participated in the hearing on the admission of the appeal, condonation of delay in filing the appeal and stay on execution of the impugned order taken up through video conferencing.

On behalf of the appellant learned advocate Mr Gupta took this Tribunal through the pleadings in the appeal memo and submitted that the impugned order has been passed behind the back of the appellant without taking into consideration the documents placed on record during the inquiry. He further submitted that on 28/2/2011 the establishment had applied for voluntary coverage under the Act and along with the application had submitted a cheque for Rs 50,000. The department neither encashed and deposited the cheque in the appropriate account nor allotted the EPF Code No. after a considerable time, the appellant gave a reminder which too remained unheeded. In the year 2013 when the advocate of the establishment visited the office of the respondent, could only know about the allotment of the code no covering the establishment w.e.f.1/10/2010. Soon thereafter the appellant deposited the EPF Dues of its employees and the deposits were made on 27/2/2013, 28/2/2013 and 25/3/2013. Suddenly on 20/3/2014 a notice was served on the appellant u/s 14B and 7Q of the Act for the period 4/1996 to 3/2014. Though the AR for the establishment had pleaded about the mitigating circumstances leading to delayed remittance, without considering the same the APFC passed the impugned non speaking order which is illegal. While citing the judgment of the Hon'ble High Court of Bombay in the case of Pooja Shims Pvt Ltd VS B.P.Ramiah(2007) I I L J 620 Bombay, he further submitted that when the cause of delay in remittance is attributable to the Department, it

is highly illegal to fasten the liability of damage and interest at such a high rate.

With regard to the delay in filing the appeal it has been stated that the impugned order though passed on 30/12/2019, it was communicated via e-mail on 6.2.2020. When the appellant was collecting documents to file appeal, lock down was declared due to the emergent condition for COVID-19. However, the appeal has been filed within 120 days from the date of knowledge and the Tribunal, in view of the direction of the Apex court for condonation of delay in filing of cases, during the lock down period, should condone the delay, admit the appeal, issue an interim order of stay on execution of the same till disposal of the appeal. He also submitted that the appellant has a strong arguable case and refusal of stay on the impugned order would make the appeal infructuous.

In his reply the learned counsel for the respondent fairly conceded to the submission with regard to the direction of the Hon'ble Apex court for condonation of delay occurring due to the lock down for COVID-19. Hence considering the submissions and the fact that the appeal has been filed within 120 days from the date of knowledge, the delay is condoned and there being no other defect the appeal is admitted.

Mr Mahanta the learned counsel for the respondent, while supporting the impugned order, submitted that the establishment when applied voluntarily for the code no. had enough knowledge about the applicability of the provisions of the Act. Instead of waiting for the code no it should have deposited the contribution without waiting for the code no.

However the code was allotted in time and the appellant being a defaulter is liable to pay the damage and interest. He also submitted that no composite order u/s 14B and 7Q has been passed. Hence the appeal challenging the 7Q order is liable to be dismissed. His other argument is that any order of stay will defeat the purpose of the Legislation.

It is true that two separate orders for damage and interest has been passed and there is no material placed on record to accept that in one proceeding both damage and interest were dealt to make the order a composite one. Hence, there cannot be any stay on the interest part of the order passed in exercise of the power conferred on the commissioner under section 7Q of the Act.

The commissioner has not discussed the mitigating circumstances causing delay in remittance of the dues nor could consider the submission made by the appellant about the application and reminder for the code number though in the proceeding dated 26th February, 2019 shows about the direction given to the department officials for

verification of the record. The impugned order also doesn't disclose the period for which the damage has been calculated and the calculation sheet has not been annexed to the order.

The submission advanced by the applicant leads to a conclusion that the establishment had applied for the code number voluntarily and in the impugned order, the commissioner has not shown when this code number was allotted and communicated to the appellant. Instead, notice dated 20th March, 2014 was served on it. The circumstances clearly show that the department had acted in a negligent manner for allotment of the code number and proceeded to pass the non-speaking order imposing damage on the establishment.

In the case of Abhijit Samaydarshika Ltd VS UOI,(1995-1-CLR,655) the Hon'ble High Court of Bombay have held "It would be difficult to appreciate how the department would absolve itself of the responsibilities and find fault with the petitioner's company for delayed remittance"

The facts of the case of Abhijit Samaydarshika referred supra being identical to the facts of the case in hand it is prima-facie held that the appellant has a strong arguable case in the appeal. Unless there would be a stay on the impugned order of damage pending disposal of the appeal, the relief sought in the appeal would become illusory.

Hence it is ordered that that the delay in filing the appeal is condoned, appeal is admitted. The execution of the impugned order imposing damage shall remain stayed till disposal of the appeal. However the order of stay shall not be unconditional. The appellant is directed to deposit Rs. 30,000 within two weeks from the date of communication of this order by way of Challan with the Respondent. Call the matter on 17.08.2020 for compliance of the direction. It is made clear that there would be no stay on the order passed u/s 7Q of the Act.

Sd/-
Presiding Officer