

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No.D-1/119/2019

ORDER DATED:-23.03.2021

Present:- Shri Haribanmsh Manav, Ld. Counsel for the Appellant.
Shri B.B.Pradhan, Ld. Counsel for the Respondent.

The appeal challenges the composite order dated 17/10/19 passed by the APFC Delhi under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs7,83,347/-and Rs12,13,109/-as damage and interest respectively, for delayed remittance of EPF dues for the period 6/2010 to 3/2018.

Two separate petitions have been filed by the appellant praying condonation of delay for admission of the appeal and interim stay on the impugned order pending disposal of the appeal for the grounds taken in the petitions.

Being noticed the respondent entered appearance and learned counsel Shri B.B. Pradhan representing the respondent participated in the hearing on admission, condonation of delay and interim stay.

The learned counsel for the appellant Shri Haribanmsh Manav mainly canvassed two points for challenging the impugned order i.e the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner, who proceeded to pass a nonspeaking order mechanically. Furthermore during the preceding years of the period under inquiry, the appellant had to undergo acute financial hardship and company went into immense cash crunch and there was delay in remittance of PF Dues having no mensrea behind the same. Though the commissioner was made aware of the situation that the delay in remittance is attributable to the delay in release of Bills by the principal employer, the same was not considered at all by the commissioner. The other point raised by the appellant is that the basis of calculation of damage, though was made available to the appellant, no opportunity was given for verifying the related documents placing the documents relating delay in release of bills on record. Moreover the commissioner has not assigned any reason for imposing 100% damage. He thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delayed remittance the impugned order is not

sustainable under law and the appellant has a strong arguable case in this appeal. Unless the impugned composite order levying damage and interest is stayed, serious prejudice would be caused to the appellant. With regard to delay in filing the appeal it has been stated that the impugned order was on 17.10.19 and the appeal was filed on 27.12.19. A reasonable time was taken by the appellant in collecting the documents and preparing the appeal. However the same has been filed before expiry of 120 days, till which, this Tribunal has the discretion of extending the time limit. Hence the appellant has prayed for condonation of delay.

On behalf the respondent the learned counsel took serious objection for extension of time and condonation of delay.

The appeal has been filed after expiry of 60 days from the date of communication of the order but within 120 days of the order. The Act has given a discretion to the Tribunal for extension of time up to 120 days in appropriate cases. Moreover a party to a litigation should not be punished for the fault committed in the conduct of the case unless the malafides for the same is proved. In this matter I find no reason of rejecting the explanation offered by the appellant, explaining the delay.

Hence the petition for condonation of delay is allowed and the appeal is admitted.

On behalf of the appellant it was argued that the commissioner has passed a composite order levying damage and interest. Hence the order passed u/s 7Q of the act is appealable and need to be stayed till disposal of the appeal. In order to convince this tribunal that the order passed u/s 7Q is also appealable, he pointed out that pursuant to a common notice, joint inquiry proceeding was held to calculate the damage and interest and a common order was passed on 17.10.19. To support his argument the learned counsel for the appellant has placed reliance in the case of Shreeji Cotfab Limited vs. APFC, decided by the Hon'ble High Court of Rajasthan.

In his reply the learned counsel for the respondent while arguing on the benevolent provisions of EPF&M P Act submitted against grant of stay on the operation of the impugned orders. The Hon'ble SC in the case of Arcot Textile Mills Ltd vs. RPFC decided in civil appeal no 9488/2013 have held that when two separate orders are passed/s 14B and 7Q of the Act, those are not composite orders and appeal challenging the order u/s 7Q is not maintainable.

On hearing the argument advanced by both the counsels and on a careful reading of the judgment of Arcot Textiles referred supra, it is found that the Hon'ble Apex court have clearly observed that when two separate orders are passed,

those can not be treated as composite orders. But in this case as seen from the impugned order a composite order has been passed by the commissioner.

On hearing the argument advanced by the counsel for both the parties an order need to be passed on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied.

In this case the period of default as seen from the impugned order is from 6/2010 to 3/2018 and the amount of damage assessed is equally big. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** the Hon'ble Supreme Court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order levying damage and interest pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit Rs 6,00,000/ which is little more than 30% of the assessed amount of damage and interest through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e on 27.04.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer

