



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 non remittance of PF dues of the complainant Mohit Rajput. On 27.2.20, during the inquiry, the representative of the establishment had submitted a written submission along with the documents like TDS return of the said complainant, bank statement, salary sheets and Balance sheet for the inquiry period. The stand taken by the establishment was that the complainant Mohit Rajput was not the employee of the appellant establishment, but the contractor to supply labourers for transportation of goods. It was agreed between the appellant and the contractor that the no of the labourer to be supplied would vary depending upon the requirements and the payment shall be made on verification of the Bill to be raised. Not only that it was also agreed that the contractor shall be responsible for all statutory compliance. On the basis of the reply of the appellant establishment the complainant was called upon to submit his reply. It is evidently clear from the impugned order that the reply submitted by the complainant was never supplied to the establishment for rebuttal. On the contrary, on verification of documents the AEO submitted a report indicating that the contribution has been omitted to be paid on the wage paid to the labourers and accordingly the assessment was made. For doing so the commissioner solely relied upon the report of the EO, which was also not supplied to the establishment. 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 EPF contribution has been properly made in respect the employees of the establishment, the same was never considered. The learned counsel for the appellant went on 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.

In the case of **Small Gauges Ltd &Others VS V P Ramlal APFC** decided by the Hon'ble High Court of Bombay, it has been held that unless the documents deposition and calculation forming basis of the order are made available to the establishment it can not be said that the basic tenets of the principle of *audi alteram partem* was followed. Reliance is also placed in the case of Kranti Associates in which the Hon'ble Appex Court have held that the commissioner can not pass the order on the basis of mathematical calculation as if Tax is assessed, without identifying the beneficiaries. The appellant 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 there by 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 an established business house having least chance of running away from the reach of Law and 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 7-O by depositing 75% of the assessed amount. Learned counsel Mr Singh also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt Ltd VS RPFCA, to submit that the Tribunal can not 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 7-O 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 4/14 to 6/19, and the amount assessed is 21,26,185/-. There is no mention in the order about the basis of the calculation arrived at and the identities of the beneficiaries. Without going to the other detail as 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, taking into consideration the period of default, the amount assessed and the prevailing circumstances on account of the outbreak of COVID -19. However, 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 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 4 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar of the tribunal initially for a period of one year 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 24.02.2022 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.

(Presiding Officer)