

**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-1/104/2019

M/s Gopish Pharma

Appellant

VS.

RPFC, Delhi (N)

Respondent

ORDER DATED:-24.03.2021

Present:- Shri S.P Arora, Ld. Counsel for the Appellant.
Shri D.R Rao, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying 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 the petition being served on the respondent, learned counsel for the respondent Shri D.R Rao appeared and participated in the hearing held on 05.03.2020, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 30.08.2019 by the RPFC, Delhi (North) and was communicated to the establishment on 11.09.2009. The appeal has been filed on 08.11.2019 i.e. within the prescribed period of limitation.

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 and in respect of excluded employee as define under paragraph 2(F)(II) of the EPF Scheme. The establishment was a small proprietorship firm engaged

in production of life saving drugs as per norms and standards prescribed by the competent Delhi Drug Authority. Due to non renewal of drug license by the said Authority the establishment was close down permanently w.e.f 31.07.2017. The commissioner served a notice of inquiry u/s 7A for the period 09/14 to 03/18. The representative of the establishment appeared and requested for summoning the employees in question who had submitted declaration in form 11 to fortify the claim of the appellant about the excluded employees. But the commissioner without paying any heed and ignoring the cooperation extended by the establishment went on to pass the impugned order solely basing on the report of the enforcement officer for the retrospective period for which the employees contribution was not deducted. Not only that the establishment had also a bankers cheque of Rs. 58,542/- in favour of the RPFC towards full and final PF dues in respect of the eligible employee due and payable for the period 08/17 only alongwith the minimum administrative charges due and payable for the closed period from 08/17 to 03/18. Filing a copy of the document in proof of the same as annexure A-IV the appellant has stated that the commissioner proceeded to pass the impugned order in gross violation of the procedure established under law. Alongwith the 7A inquiry notice no documents which are the basis of the calculation was supplied to the establishment. Thereby the appellant submitted that the assessment based upon the report of the EO is illegal and liable to be setaside. He thus, prayed for admission of the appeal waiving the condition of pre-deposit contemplated u/s 7O of the Act. On the ground that the appellant has strong arguable case in the appeal.

In the case of **APFC vs. M/S Nandalal**, decided by the Hon'ble High Court of Patna it has been held 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 EO only. The Ld. Counsel 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 whose

commercial activity has come to a halt. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. To support his submission reliance has been placed in the case of M/S Banars Valves Ltd & Others vs. Commissioner of Central Excise, decided by the Hon'ble Supreme Court wherein it has been held that **“if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.”** He also submitted that the appellant has 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 7-O by depositing 75% of the assessed amount. Learned counsel Mr. Gupta 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 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.

The commissioner in this case made the assessment on the basis of the report of the EO only, without giving adequate opportunity to the establishment for proper defence.

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. For the same, it needs to be considered that the period of default in respect of which inquiry was initiated was from 09/14 to 03/18. The amount assessed is Rs 5,58,884/-. There is no mention in the order about the basis of the calculation arrived and identification of the beneficiaries. Without going to the other details 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 in view the principle decided in the case of **Banaras Valves** referred supra ,as well as considering the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances into consideration. The Hon'ble Apex Court in the case of Banaras Valves referred supra have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter has pleaded about the closure of the production unit to make this Tribunal believe the undue hard ship it would face if the waiver of the condition of pre deposit is not ordered.

But considering the submission of the parties, it is held 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 20% 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 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 orders till disposal of the appeal. List the matter on 28.04.2021 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