

**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-2/07/2020

M/s H.K. Corporation

Appellant

Vs.

RPFC, Faridabad

Respondent

ORDER DATED:-06.04.2021

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri Chakradhar Panda, Ld. Counsel for the Respondent.

This order deals with the application filed by the appellant for condonation of delay, admission of appeal and a prayer for an interim order of stay on the execution of the impugned order passed u/s 14B of the EPF and MP Act. The respondent appeared through its advocate on receipt of the notice and argument was heard on the above said prayers on 17.03.2020.

It has been stated by the appellant that alleging delayed remittance of the PF dues of its employees for the period 04/2011 to 04/2014 a Composite order was passed by the APFC directing the appellant to deposit penal damage and interest. Being aggrieved by the said order the appellant/establishment had preferred an appeal which was registered as ATA 712(16)/2014. On hearing the appeal the tribunal remanded back the matter for reconsideration by its order dated 13.02.2019. Thus, this is the second round of litigation.

The commissioner again initiated an inquiry and passed the order u/s 14B and 7Q separately on 26.12.2019 and 30.12.2019 respectively. By the said order the appellant has been directed to deposit damage of Rs. 6,00,773/- and interest of Rs. 3,00,467/- for the period 04/2011 to 04/2014. The said impugned order was received by the appellant on 23.01.2020 and the appeal was filed on 02.03.2020. The period of limitation if computed from the date of the receipt of the order, the appeal is within the prescribed period of limitation. It has been stated that as an abundant caution the appellant has filed a petition for condonation of delay. The appeal involves valuable rights of the appellant and the period of delay if not condoned the appellant would be seriously prejudice.

The Ld. Counsel for the respondent vehemently opposed the prayer for condonation of delay and submitted that the impugned order was passed on 26.12.2019 and on the same day it was dispatched to the appellant.

But surprisingly the covering letter of the impugned order filed by the appellant alongwith the appeal doesn't contain any date of dispatch nor any date has been mentioned below the signature of the RPFC who had dispatched the same. In such a situation the tribunal finds no reason of rejecting the submissions made by the appellant that the impugned order was received on 23.01.2020. Hence, it is concluded that that the appeal has been filed within 60 days from the date of the receipt of the order and within 120 days upto which the limitation period can be extended. Hence it is held to be a fit case for condonation of delay. There being no other defect pointed out by the office the appeal is admitted.

The other petition filed by the appellant is for an interim direction of stay on the execution of the impugned order till disposal of the appeal. The appellant has stated that this is a second round of litigation in which the commissioner has given a goodbye to the Principles of Natural Justice. The first order u/s 14B and 7Q was passed on 18.07.2014 and the same being challenged in the appeal this tribunal had remanded the matter for reconsideration. But the RPFC Faridabad without issuing a fresh showcause notice started the joint proceeding of 14B and 7Q inquiry. Having come to know about the proceeding the representative of the appellant visited the office of the commissioner on several occasions and requested for supply of the documents and materials forming the basis of the calculation. He also asked for the copy of the damage register maintained in the office of the respondent. It was also pleaded before the commissioner that the establishment is an organization engaged in supply of manpower. It depends upon the clearance of the bills by its clients. Sometimes the release of bills by the clients is delayed which ultimately causes delay in remittance of the PF dues. However, as soon as the bills are release the PF contributions are made. There being no mensrea or actusreus behind the delay in remittance the establishment is not liable to pay the damage. But the commissioner never considered the submission and without giving any finding on the mensrea passed the impugned order which is patently illegal. The appellant has strong points to argue in this appeal. Till then the establishment need to be protected from the recovery action of the respondent. Thereby he pleaded for an interim stay on execution of the impugned order.

The Ld. Counsel for the respondent while arguing on the purpose of the legislature in enacting a provision of law laid u/s 14B of the Act submitted that the impugned order was passed giving due consideration to the submissions made by the A/R of the

establishment. The points raised by the appellant at this stage can be argued during the hearing of the appeal on merit. Any order of interim stay on the execution of the impugned order would defeat the purpose of the legislation. He thereby argued for rejection of the petition.

In order to allow the prayer of the appellant for the stay this tribunal is required to consider the factors like the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)**, the Hon'ble High Court have held:

“The order of tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insists on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen in the impugned order is for 2 years and the damage levied is 600773. Moreover, the appellant has disputed the same on the ground that the basis of calculation was not made available to him. The Hon'ble High court of Delhi in catena of cases have criticized the approach of the PF Commissioner in calculating the penal damage as if tax without providing the basis of calculation to the establishment. The non supply of the basis of calculation as alleged by the appellant makes the impugned order prima facie illegal and it is held that the appellant has strong case to argue.

Without going to the other details pointed out by the appellant it is felt that the impugned order should remain stayed till final disposal of the appeal. But the circumstances do not justified unconditional stay of the order. Accordingly it is directed that the appellant shall deposit 20% of the assessed damage as a condition for grant of stay of the impugned order till disposal of the appeal. The deposit shall be made within 4 weeks from the date of communication of this order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant through challan. Call the matter on 18.05.2021 for compliance this direction. The earlier order of stay shall continue till the date given for compliance of this order. Respondent shall file reply to the appeal by 18.05.2021.

Sd/-

Presiding Officer