

**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.

Appeal No.D-1/111/2019

M/s. Houte Couture (India)

Appellant

VS.

RPFC/ APFC, Delhi (South)

Respondent

ORDER DATED :-13/1/2022

Present:- Shri Shwetank Sharma, Ld. Counsel for the Appellant.
Shri. Rajesh Kumar, Ld. Counsel for the Respondent.

The appellant has challenged the order dt 26.03.19 passed u/s 14B and 7Q of the EPF & MP Act by the RPFC Delhi south, wherein the appellant establishment has been directed to deposit Rs 1,60,011/- as damage and Rs 51,945/- towards interest for delayed remittance of the EPF dues of its employees for the period 1.11/97 to 08/2012. Alleging that the order has been passed in a mechanical manner without assigning good reasons and without affording opportunity to the establishment is bad in law and liable to be set aside. The learned counsel for the appellant citing the judgement of the Hon'ble SC in the case of APFC Vs. Management of RSL Textiles Ltd submitted that the order passed by the commissioner is illegal and not sustainable for not discussing the mens rea on the part of the appellant for the delayed remittance. As such no damage as a punitive measure should have been imposed by the commissioner. The other argument advanced is that the establishment has stopped its business since March 2004 and this fact of closure of business was duly intimated to the EPFO Authorities by a written communication dt 18/12/2008. By filing a photo copy of the said communication from their office file the appellant has pleaded that the letter contains acknowledgement of receipt. Having knowledge of that closure the commissioner assessed the damage and interest for the period after an inordinate delay and with regard to the period when the appellant was not doing business. It is also the stand taken by the appellant that in the year 2009, the enforcement officer visited the establishment and handed over a show cause notice for recovery of damage and interest assessed. The then partner had handed over two separate cheques for the assessed amount of damage and interest. The cheque nos. with date of issue have been mentioned in the appeal memo. Thus the appellant has pleaded that a second proceeding for damage and interest has been illegally initiated against the establishment.

The learned counsel for the respondent, while supporting the impugned order submitted that the very purpose of EPF & MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to act as a deterrent to the omission and delay caused by the employer in deposit of the dues. In this case though

sufficient opportunity was allowed to the appellant establishment to state its defence, it opted not to participate in the hearing. Hence the impugned order was appropriately passed. He thereby submitted that any order of stay if allowed would defeat the purpose of the Act.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the prayer for interim stay made by the appellant who has argued extensively about the undue hardship likely to be caused if the impugned order is not stayed. The Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005 SCC page 1 and in the case of Escorts Limited and another vs Union Of India reported in 43(1991) DLT 207** have held that the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 11/97 to 8/2012, and the amount of damage assessed is also big to cause undue hardship when it is the specific stand taken by the appellant is that it has closed down its business. 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 pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 5% of the assessed amount of damage and interest as it is a composite order 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 07.02.2022 for compliance of the direction and final hearing of the appeal as the Respondent has already filed his reply. Interim stay granted earlier shall continue till then.

(Presiding Officer)