

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT 1, DELHI**

Present: Justice Vikas Kunvar Srivastav
(Retd.)

Presiding Officer,
CGIT-cum-Labour Court Delhi-1.

**Misc. Application filed u/s 7 O of EPF & MP Act,
1952 (in Appeal No. D-1/118/2019)**

M/s. Himgiri Automobiles Pvt. Ltd. Appellant

Vs.

RPFC, Delhi (East)

Respondent

Order: - 24.03.2023

Through Counsels: -

1. Sh. S.P. Arora & Sh. Rajiv Arora, for the Appellant
2. Sh. Narender Kumar, for the Respondent

1. The present application is filed on behalf of the applicant/ appellant 'M/s. Himgiri Automobiles Pvt. Ltd.' under section 151 the Code of Civil Procedure, 1908 read with section 7 O of the "Employees' Provident Funds & Miscellaneous Provisions Act, 1952" (which shall hereinafter be referred for brevity and convenience as "the Act" only) seeking grant of ad interim ex parte stay and for exemption of the deposit of 75% of the assessed amount under Section 7 A of "the Act" as mandated under Section 7 O of "the Act".

2. The Appellant has filed an Appeal against the order dated 28.08.2019 (which shall hereinafter be referred for brevity and convenience as "the impugned order" only) passed u/s 7-A of "the Act" by which the Regional

P.F. Commissioner (EPFO, Delhi East) , the Respondent has assessed an amount of ₹24,14,959/- as dues to be paid by the Appellant towards P.F. Contributions for the period 04/2012 to 03/2015.

3. The Appellant further submitted through the averments made in his present application that the Respondent authority enforcing the recovery in haste had arbitrarily and illegally recovered the entire amount of ₹24,14,959/- by attaching the HDFC Bank account of the appellant.

4. This recovery of the assessed amount by the Respondent authority has resulted in pre-empting the powers of this Tribunal as enshrined under section 7 O of “the Act” and by exercising which the Tribunal is empowered to reduce or waive the entire amount of pre-deposit which is limited upto 75% of the amount assessed through “the impugned order”.

5. Inviting the attention of this Tribunal towards the provisions of Section 6 of “the Act”, the Applicant/Appellant submitted that the Appellant is not required to be burdened with the pre-deposit in such case where the PF contributions are not deducted from the salaries of employees and therefore, the same would have been reduced by the Tribunal during the course of hearing this application filed under Section 7 O of “the Act” , if the Respondent had refrained themselves from recovering the whole amount as assessed vide “the impugned order”.

6. Disputing the assessment made by the Respondent Authority, the Applicant / Appellant disputed the assessment primarily on the ground that the Respondent having regard to the facts and circumstances of some other establishment namely “M/s. Vishakha Facility Management (P) Ltd.” had determined the dues of ₹24,14,959/- for the period

04/2014 to 03/2017 which is not the period of enquiry in the present case.

7. The appellant further relied upon the decision dated 24.08.2016 of this Tribunal in Appeal No. 1181(4)2015 vide which complete waiver from the provisions of Section 7 O of “the Act” was granted to the Appellant and thereafter, the appeal was also allowed by this Tribunal and therefore, requested that the submissions made in the earlier appeal are subject matter of present appeal are per se sufficient for the complete waiver of pre-deposit and allowance of this appeal and this Tribunal may consider those averments for waiving the amount of pre-deposit and subsequently, allowing the appeal.

8. Raising the questions about the legality of the determination of the amount, the Appellant submitted that “the impugned order” is beyond the jurisdiction of the Respondent on certain counts of Minimum wages and / or the term of contract of service signed between the employer and the employees as the Respondent authority has no power to dictate the terms of contract of service. The current enquiry period which ranges from 04/2012 to 03/2015 is having an overlapping period of 04/2012 which was already part of determination of earlier order dated 30.07.2015.

9. In rebuttal to the averments made on behalf of the Applicant/ Appellant, the Ld. Counsel for the Respondent has relied upon the letter dated 14.11.2019 of one Shri Rajendra Kumar Tomar, Manager HR of the Appellant establishment, submitting that the Appellant had voluntarily deposited the assessed amount of ₹24,14,959/- by way of challans and the Respondent authority has not recovered the amount.

10. The Respondent Counsel also submitted a copy of the Corrigendum to “the impugned order” dated 20.01.2020 correcting: -

i. the period of enquiry from '04/2014 to 03/2017' to be read as '04/2012 to 03/2015' and

ii. The name of establishment 'M/s. Vishakha Facility Management (P) Ltd.' Be read as 'M/s. Himgiri Automobiles (P) Ltd.'

11. The respondent by way of written submission/reply has objected to the present application filed for waiver of the pre-deposit amount which is taken on record.

12. The respondent in his written reply, denying the contents of the present application filed on behalf of the Appellant, submitted that the averments made in the application are wrong, false, frivolous, misleading, concocted and vague as the present case is totally different from the previous case of appellant as it is a complete case of subterfuge of wages in order to reduce the PF liability.

13. Further, regarding the question of overlapping period of 04/2012 which was already part of determination of earlier order dated 30.07.2015; the Ld. Counsel for the Respondent submitted that only one month i.e. 04/2012 was overlapping as the current enquiry period was taken considering financial year 2012 to financial year 2015.

14. Elaborating the averment related to the recovery of the amount, the Ld. Counsel for the Respondent submitted that the amount was not recovered after attachment. On the contrary, the appellant/establishment started voluntarily paying the dues from 13.09.2019 where an attachment order under Section 8F of "the Act" was issued to the appellant's banker on 08.11.2019 and the same was received by the banker of the Appellant on 14.11.2019.

Ans therefore, the appellant had already deposited the full assessed amount before 14.11.2019 through Electronic Challan cum Returns (ECRs) voluntarily. The letter dated 14.11.2019 confirms that the Appellant had started paying the dues from 13.09.2019 itself.

15. The Ld. Respondent by way of a brief affidavit had submitted that –

- i. *The Respondent/E.P.F.O. has already issued a letter dated 18.11.2019 to the Manager of H.D.F.C Bank for defreezing the bank a/c no. 07092790000014 & 07098630000092 of appellant M/s Himgiri Automobiles Pvt. Ltd.*
- ii. *The remitted amount has been credited to the member's/beneficiaries/PF account mentioned in respected ECRs.*
- iii. *The Respondent has verified the details provided by the appellant M/s Himgiri Automobiles Pvt. Ltd. vide letter dated 14.11.2019 against the 7-A assessment amount and found the same is correct.*

The respondent has also enclosed the copy of letter dated 18.11.2019 addressed to the Manager, H.D.F.C Bank limited, Krishna Nagar, Delhi-110051 directing to de-attach the aforementioned bank accounts and copy of the letter was also marked to the appellant also.

16. Regarding the averments related to the limitation of the term of contract between the employees and the employer and the sacrosanctity of the said service contract, the Ld. Counsel for the Respondent has replied that any private agreement is not above the law of the land. Relying upon the provision of Section 23 of the Indian Contract Act, 1872; the Ld. Counsel for the Respondent has submitted that no matter that the employer and the employees are the sole parties to the contract agreement, but it is well settled principle that

statutory law is overarching over any executive decision, which in this case is a private agreement entered between two parties and the same is void ab-initio as far as it defeats provisions of any other law of land i.e. “the Act”. The Respondent authority has not dictated or altered the terms of the contract as alleged by the appellant, on the contrary, the Respondent has tried to ensure that “the Act” is followed in letter and spirit so that the employees can get benefits of the social security legislation and the employer had agreed to comply with the provisions of the Act by removing such irregularities.

17. Obviously, the impugned order is issued for the assessment of the dues on account of Provident Fund from 04/2012 to 03/2015 but from the body of the order of assessment impugned in this appeal, it is crystal clear that the officer concerned, without application of mind over the period of default under consideration, the amount actually fell due and the number of employees etc. has simply discharged the function mechanically by copy, cut & paste from the order in case of M/s. Vishakha Facility Management (P.) Ltd. This is further noteworthy that period of enquiry is actually from 04/2012 to 03/2015 as such the assessment seems to be imaginary and made carelessly.

18. Heard, both the parties and it is relevant to mention here the provisions of section 7 O of “the Act” which runs as under-

7O. Deposit of amount due, on filing appeal.- *No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in Section 7-A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.]*

19. Further, the Rule 7 of the Tribunal (Procedure) Rules, 1997 also states that:-

7. Fee, time for filing appeal, deposit of amount due on filing appeal.— (1) *Every appeal filed with the Registrar shall be accompanied by a fee of Rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.*

(2) *Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal. Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.*

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

7. Hearing the arguments of both the parties and carefully considering the provisions of “the Act” as well as “the Rules” framed therein, it is observed that although, the impugned order suffers from serious irregularities, however, as far as the question of recovery of the amount as assessed through the impugned order is concerned, the same is deposited voluntarily by the Appellant by way of Electronic Challan cum Return (ECR) and the same stands credited to the respective EPF accounts of the subscribers.

ORDER

The application of the Appellant filed under Section 7 O of “the Act” asking for waiver of the pre-deposit is allowed as whole amount as assessed through the impugned order stands deposited voluntarily with the Respondent. The Appellant is not required to deposit any further amount in compliance of the provisions of Section 7 O of “the Act”. Similarly, as the assessed amount stands credited in the EPF accounts of the subscribers, there is no necessity at this stage to pass any order regarding the refund of the amount to the Appellant.

The appeal stands admitted for hearing. List the matter on 25.04.2023 for filing reply to the appeal by the Ld. Counsel for the Respondent after supplying copy of the same to the opposite party.

Justice Vikas Kunvar Srivastav (Retd.)
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.

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