

**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-1/45/2021

M/s Kaizen Auto

Appellant

Vs.

RPFC/APFC, Delhi

Respondent

ORDER DATED -24/01/2022

Present:- Sh Sandeep Sharma, Ld. Counsel for the Appellant
Sh Narender Kumar, Ld. Counsel for the Respondent

This order deals with appellant's prayer for condonation of delay, admission of the appeal and stay on the execution of the impugned orders pending disposal of the appeal.

The appeal challenges the orders dt, 15.11.2019 passed by the APFC Delhi u/s 7A of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 17,43,387/-towards the unremitted EPF dues of its employees for the period 5/14 to 8/16. Notice being served on the respondent, learned counsel Sh Narender Kumar appeared and participated in the hearing held by video conferencing. A separate application has been filed by the appellant for condonation of delay.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 15.11.2019 and the appeal has been filed on 2.12.2021, i.e beyond the period of limitation. Thus a separate petition has been filed by the appellant praying for condonation of delay for the reasons explained therein. Another prayer has been made for stay on the execution of the impugned orders passed u/s 7A of The Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

Since, the registry has pointed out about the inordinate delay in filing of the appeal and Respondent's counsel took serious objection to the same, it is desirable that the prayer for condonation of delay be dealt at the first instance.

It has been contended that the company against which the impugned order has been passed was not aware of the impugned order till service of the recovery notice. The representative of the establishment on inquiry came

to know about the impugned order and on inquiry learnt that the order was sent in the wrong address. Thus, the appeal has been filed within the period of limitation from the date of knowledge.

The Registry of this Tribunal has pointed out that the appeal has been filed after inordinate delay. The learned counsel for the respondent during course of his argument submitted that the impugned order was passed on 15.11.19. and on the same day it was dispatched in the address as mentioned at the bottom of the order. He has instruction from the department that the order sent by post never returned undelivered. Since the appellant had never informed the Respondent about its change of address, it can not be held that any lapse occurred on the part of the Respondent in serving the copy. Hence the appeal is hopelessly barred by limitation and liable to be dismissed. He also argued that when the Act provides a time limit of 60 days for filing the appeal, which can be extended for a further period of 60 days in appropriate cases the Tribunal can not condone the delay beyond that period.

To support his contention he placed reliance in the case of C/M Angoori Devi Inter College and another VS State of U P & three others decided by the Hon'ble High Court of Allhabad in writ case no27906/2019, in which it has been held that

“when a time limit has been prescribed by the rule making authority for filing an appeal, and also the extended period having been provided, and no further extension thereof having been envisaged or contemplated, the appellate authority can not grant any further extension beyond the statutory period of limitation. He has also placed reliance in the case of RPF VS EPFAT, decided by the HON'BLE Punjab & Haryana High Court in CWP No5201/2000.

In his reply the learned counsel for the appellant submitted that in fact there has been no delay in filing the appeal but as an abundant caution the application for condonation of delay has been filed. While pointing out the defects and discrepancies in the impugned order and recovery notice including non identification of beneficiaries, he submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner in dealing with the delay condonation application. In this regard he has placed reliance in the case of N Balkrishnan VS M Krishnamurthy(AIR1998 SC3222) to argue that Rule of limitation are not meant to destroy the right of the parties. He also submitted that the impugned order has been passed behind the back of the appellant and the appellant has a fair chance of succeeding in the appeal. Hence the Tribunal should consider the circumstances shown for condonation of delay and admit the appeal.

While fully agreeing with the submission that courts and Tribunals exist to sub serve the cause of justice and not to punish the parties for the fault committed in conduct of the case, in this case the appellant has placed on record some documents to establish prima facie that the impugned order was not properly served on the establishment. From the recovery notice issued to the appellant by the Respondent it is proved that the respondent had knowledge about the changed address of the appellant but the

impugned order was never sent in the said changed address of the appellant until it was collected on 10.02.2021.

Hence, considering the submission advanced by the learned counsel for both the parties, it is held that the present appeal though has been filed after the prescribed period of limitation, the same has been properly explained by the appellant. The delay is, thus, condoned.

Now it is to be considered if the circumstances justify waiver of condition of pre deposit provided under section 70 of The Act.

The appellant has stated that the commissioner conducted the inquiry behind the back of the appellant and passed a non speaking and unreasonable order in which no finding has been given on the identification of the beneficiaries in respect of whom the establishment defaulted in remittance. Appellant has also argued that the establishment has resigned from the authorized dealership of Nissan Motors and has closed down the business. It is now going through acute financial problems. He thereby submitted that the appellant has a strong case to argue in the appeal. Unless the appeal is admitted waiving the condition of pre deposit, with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant and the relief sought for would become illusory.

Of course the appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about its fair chance of success. But the Tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file its objection.

In this case the period of default as seen from the impugned order is from 5/14 to 8/16 i.e. for a period of two years, and the amount assessed is equally big. The commissioner, in the order has held that the no of employees as shown in the un-audited balance sheet does not tally with the wage. Thus, on hearing the argument advanced, it is held that the circumstances do not justify total waiver of the condition of pre deposit, but ends of justice would be served by reducing the same to 40% of the assessed amount. Accordingly it is directed that the appellant shall deposit 40% of the assessed amount towards compliance of the provisions of sec 70 of the Act by depositing FDR in the name of the Registrar of the Tribunal initially for a period of one year with provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on 14-March-2022 for compliance of the direction. interim order of stay granted earlier shall continue till the next date.

(Presiding Officer)