

**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-1/13/2021

ORDER DATED:- 12.04.2021

Present:- Ms. Neetu Mishra, Ld. Counsel for the Appellant.
Ms. Sundari Rawat vice Shri Balraaj Deewan, Ld. Counsel for
the Respondent.

This order deals with the application filed by the appellant for condonation of delay, admission of the appeal and an interim order of stay on execution of the impugned order. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, an establishment engaged in supply of man power to other establishments, challenging the order dated 29/10/2020, passed by the APFC, Delhi East, u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs 5,87,278/ as damage and Rs 3,13,257 as interest for the period 09/2008 to 31/2019. It has been stated that the appellant establishment has been provided with a code no for deposit of the PF dues of its employees. The establishment has been sincere and vigilant in the matter of the PF dues since the date of allotment of the said code no. Notice for inquiry u/s 14B & 7Q was received on 27/9/19 and the establishment by filing a representation explained the mitigating circumstances for the delayed remittance. But the commissioner failed to appreciate the stand taken by the appellant and passed the non speaking impugned order. It has further been pleaded that the appellant has strong arguable case in the appeal. Unless the appeal is admitted and execution of the impugned order is stayed, serious prejudice shall be caused to the appellant. Learned counsel for the appellant further submitted that the orders under challenge is a composite order and thus both be stayed pending disposal of the appeal. With regard to the delay in filing the appeal as has been pointed by the registry, she submitted that the order though was passed on 29/10/20, was never communicated until 26/11/20, when appellant at 11.47.AM received the copy via e-mail. The appeal has been filed within 60 days of receipt of the

order and thus not hit by the law of limitation. It is also submitted that the commissioner has not given any finding on the mensrea of the establishment for the delayed remittance and no reasoning for imposition of maximum percentage of damage.

In his reply the learned counsel representing the respondent submitted that the order was communicated on 12/11/20 by regd post. Since the postal cover was not received back as undelivered, the presumption of delivery is attached. The appellant has taken a wrong plea to cover up the delay. He thereby argued for dismissal of the appeal as barred by limitation. While supporting the impugned order, he described the same as a well discussed and reasoned order. He also argued that the mensrea of the appellant is evident from it's conduct. Describing the provisions of the EPF Act as a benevolent provision he submitted against the grant of interim stay order. He also submitted that the commissioner has passed two separate orders and the order u/s 7Q not being appealable, no order of stay in respect of the same should be passed.

On hearing the submission of the learned counsels an order need to be passed on the alleged delay in filing the appeal and stay on execution of the order. From the document filed by the appellant and the LCR received from the respondent, it appears that the order was received on 26/11/20 only and within 60 days there from appeal has been filed. No rebuttal document filed by the respondent to show communication of the order on 12/11/20. Hence it is held that the appeal is not barred by limitation. There being no other defect pointed by the registry, the appeal is admitted.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of it's bonafides in doing so. On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt. Ltd vs.**

Union Of India reported in 2005SCCpage1 and in the case of Escorts Limited and another vs. Union Of India reported in 43(1991)DLT 207 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 1/9/2008 to 31/8/2019 and the amount of damage assessed is 5,87,278/-. More over the appellant has raised some strong grounds in the appeal such as there is no finding on the mensrea, no adequate time was allowed to verify the old records etc. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount assessed as damage 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 Rs1,20,000/- which is little more than 20% of the assessed amount of damage by way of challan within 3 weeks from the date of communication of the order. It is made clear that there would be no stay on the order passed u/s 7Q of the Act. Call the matter on 13-May-2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-
Presiding Officer