

**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-1/13/2020

ORDER DATED:-08.04.2021

Present:- Shri S.P Arora, Ld. Counsel for the Appellant.
Shri Judy James, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount, as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the petition being served on the respondent, Learned Counsel Mr. Judy James appeared and participated in the hearing held on 27.2.2020, but no written objection was filed. Perusal of the office note reveals that the impugned order u/s 7A was passed on 18.11.19 by the RPF CII, Delhi(North) and was communicated to the establishment on 9.12.19. Being aggrieved the establishment filed the present appeal on 7.02.20. The office has pointed out there is no delay in filing of the appeal.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the inquiry was initiated on the basis of unverified complaints, though the procedure prescribes for initiation of inquiry on verified complaints only. The commissioner, neither with the notice nor during the inquiry had supplied the said complaints to the establishment, thereby giving it a chance for setting up a proper defence. The impugned order has been passed by the commissioner for the overlapping period as a previous inquiry for the period 7/1999 to 7/2009 has already

been made and order already passed and a separate appeal challenging the same is pending before this Tribunal. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. For the impugned order the commissioner solely relied upon the unverified complaints and went on to pass the order in respect of excluded employee, without application of mind while discharging a quasi judicial function. He also submitted that the impugned order has been passed by an officer in the Rank of RPF CII, who is not authorized to decide the eligibility of the employees as per the procedure. The commissioner in the impugned order has assigned a non convincing for travelling beyond the notice period while assessing the un paid amount. He thus made a prayer for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act. On behalf of the appellant reliance has also been placed also been placed in the case of APFC vs. M/S Nandalal, decided by the Hon'ble High Court of Patna to submit that the commissioner cannot pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the EO only. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that the appellant is a registered educational organization, having least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. Learned counsel for the respondent also

cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd VS RPFC , to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the prayer for time by the establishment for giving a detail reply to the deposition of the department representative. In this regard reliance can be placed in the case of **Small Gauges Ltd &Others VS V P Ramlal APFC** decided by the Hon'ble High Court of Bombay, wherein it has been held that unless the documents ,deposition, and calculation forming basis of the order are made available to the establishment, it can not be said that the basic tenets of the principle of *audialterampartem* was followed.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 8/2009 to 4/2018 and the amount assessed is 64,57,286. There is no mention in the order about the basis of the calculation arrived at. Without going to the other details as pointed out by the appellant challenging the order as arbitrary, and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to pass an order keeping in view the principle decided in the case of Small Gaudge Ltd referred supra ,as well as the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration. But it is felt that the circumstances do not justify total waiver of the condition of pre deposit and the ends of justice would be met by reducing

the amount of the said pre deposit from 75% to 20%. Accordingly ,the appellant is directed to deposit Rs13,00,000/- which is little more than 20% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the tribunal with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. List the matter on 27-May- 2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-

Presiding Officer