

**BEFORE THE HON'BLE 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.

M/s. Manav Gangwani

Appellant

Vs.

APFC, Delhi East

Respondent

ATA No. :-D-1/38/2021

ORDER DATED:-11.11.2021

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 both the petitions being served on the respondent, Learned Counsel Shri. B.B Pradhan appeared and participated in the hearing though no written objection has been filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 19.02.2021 and the appeal has been filed on 14.09.2021 i.e. beyond the period prescribed under the rule. Office has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of 60 days, this tribunal can exercise it's discretion for extension of the period of limitation in view of the order passed by the Hon'ble SC in suo motto WPC No 3/2020 extending the period of limitation until further orders. Citing the shutdown of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for a reason beyond the control of the appellant and the same be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble Supreme Court for condonation of delay and the order passed in the suo motto writ petition no 3/20. But he raised serious objection to the stand taken by the appellant for condonation on account of that direction. He advanced the argument that the impugned order was communicated to the establishment in time and thus it was required to file the appeal within 60 days, which had expired much prior to the date of filing.

Considering the direction of the Hon'ble SC for condonation of delay, it is held that the delay is not intentional but for a reason beyond the control of the appellant. It is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. The petition for condonation of delay is accordingly allowed.

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 impugned order has been passed in a stereotype manner without considering the objections taken during the enquiry by the representative of the establishment. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The EO had made an inquiry on the basis of a complaint received from one Rakesh Sharma the office bearer of "Indian National Migrant Workers Union." Despite repeated demand neither the report of the EO nor the complaint of Rakesh Sharma was made available to the appellant/ establishment. Without giving a reasonable opportunity of being heard the commissioner passed the impugned order based on the EO report assessing Rs.9,39,532/- for the period 07/2017 to 12/2019. The order is arbitrary and patently illegal for not assigning good reasons in support of the assessment by the commissioner. Citing the judgment of the Hon'ble Supreme Court in the case of Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others (2010) 9SCC 496 he submitted that the recording of the reasons operate as a valid restraint on any possible arbitrary exercise of power and reasons assure that discretion has been

exercised diligently. In this case for want of proper reasoning the order is liable to be set aside. For waiver of the pre condition it has also been stated that the financial position of the establishment has gone down due to the pandemic condition and any direction for compliance of 7O will cause undue hardship. He thereby insisted for waiver of the pre condition. He also submitted that 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.

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 establishments. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 07/2017 to 12/2019 , and the amount assessed is Rs. 9,39,532/-. In the petition filed u/s 7O of the Act the appellant has explained the circumstances which may cause undue hardship justifying waiver of the condition laid u/s 7O of the Act. Without going to the other detail 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 extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **Mulchand Yadav and another**. 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 as has been held by the Apex court in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC**

484 that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 4 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 Registrar CGIT with provision for auto renewal initially for a period of one year. 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. The interim order of stay granted earlier shall continue till then. Call the matter on 13/01/2022 for compliance of the direction.

Presiding Officer