

ATA No.D-1/112/2019
ORDER DATED:- 20 November, 2020

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with an application filed u/s 7O of the EPF and MP Act by the appellant alongwith the appeal praying exemption from the condition of pre deposit of 75% of the assessed amount. Copy served on the respondent who also filed written objection.

It has been contended that the RPFC has passed an order u/s 7A of the EPF and MP Act assessing PF dues of Rs. 10483372/- for the period 04/2017 to 03/2018. The said order has been passed without identifying the beneficiaries. The order also suffers from non application of mind as the order has been passed in respect of the excluded employee who have been drawing basic wage more than 15000 per month on account of pay revision w.e.f 01.09.2014. These employees prior to September 2014 were also drawing salary of 6500/- per month and thus, excluded employees. During the hearing all these aspects pointed out by the appellant were never considered by the commissioner. The assessment has been made on the basis of the EO'S report who was never called to testify thereby giving opportunity to the appellant to cross examined him. The commissioner went on presuming on that the salary structure has been intentionally changed w.e.f September 2014 in order to deprive them of the PF benefits. Since, the 95% of the assessment is in respect of excluded employee, the order is liable to be set aside and the appellant has a strong arguable case and the condition of pre deposit if would not be waived serious prejudice shall be caused. Thereby the appellant has pleaded for waiver of the condition for pre deposit and admission of the appeal.

The respondent filed objection through its counsel who has stated that the provision of section 7O is mandatory and in exceptional cases only it can either be reduced or waived. The appellant of this case has not made out the circumstances for total wavier or reduction. Citing the judgment of **M/s JBM Auto System Pvt. Ltd. vs. RPFC (WP) No. 25400/2019** decided by the Hon'ble High Court of Madras he submitted that in all cases the tribunal must direct deposit of 75% as a Rule and only on exceptional cases the quantum of amount can be waived or reduced. He also submitted that the provision of section 7O regulates the exercise of the right to appeal so that a party cannot abuse the provision to prolong the appeal so as to deprive the beneficiaries of their legitimate rights.

In this case the main objection taken by the appellant is that the persons employed as excluded employees were taken into consideration for assessment of the dues. The said assessment has also been made without identifying the beneficiaries and the amount if recovered would not go to the account of the persons entitle thereto. He also submitted that establishment is suffering heavy financial loss due to failure of the timely remittance of the dues by its clients. Moreover, no reasonable opportunity was ever afforded to the appellant to reply to the notice dated 09.08.2018. The enforcement officer respondent No.2 furnished the report on 14.03.2019 in respect of all the 3 inquiries together deliberately ignoring the facts and reasons brought to his knowledge. He thus submitted for waiver of the condition of pre deposit. It is settled position of law that while deciding the application u/s 70 relating to pre deposit, the tribunal should avoid a roving inquiry on the merit of the appeal. Keeping the same well in mind, it is not felt proper to give any finding at this stage with regard to the status of the complainants and their relationship with the appellant establishment.

But at the same time, when discretion has been vested with the Appellate Authority for waiver or reduction of the pre deposit amount, the said Authority has to take a decision on the same on the touchstone of prima facie case and undue hardship. In the case of **Delhi Administration vs. Mohanlal (2002)7 SCC 222**, the Hon'ble Apex Court have held that:

“Power vested by statute in a public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest and no Authority can be permitted to act in a routine manner”.

Furthermore in the case of **Shri Krishna vs. Union of India reported in 1998(104)ELT 327 (Del)** the Hon'ble High Court of Delhi while dealing with a pari-materia provision i.e. section 129 the Customs Act 1962 have held

“The tribunal is obliged to adhere to the question of undue hardship. The order of the tribunal should show if the plea raised before it, have any merit prima facie or not. If the appellant has a prima facie strong case, as is most likely to exonerate him from payment, and still the tribunal insists on the deposit of the amount it would to undue hardship.”

In this case appellant is a Pvt. Limited Company and has argued about a prima facie case in its favour. But the said stand taken by the appellant does not make out a case of total waiver. Hence, it is directed that the appellant shall deposit Rs. 30,00,000/- which is close

to 30% of the assessed amount as a pre condition for admission of the appeal within 8 weeks from today by way of FDR initially for a period of one year having auto renewal mode favouring 'Registrar CGIT'. If the Appellant complies the direction within the time stipulated, the appeal shall be admitted and here shall be stay on execution of the impugned order till disposal of the appeal. The earlier order of interim stay shall continue till the time stipulated in this order. In case of non-compliance of the direction the appeal shall stand dismissed without further reference. Call on 18-January-2021 for reporting compliance.

Sd/-
(Presiding Officer)