

**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-2/05/2021

M/s Mag Filters and Equipments Pvt. Ltd.

Appellant

Vs.

RPFC, Gurgaon

Respondent

ORDER DATED:- 16.03.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri Chakradhar Panda, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the separate petition filed by the appellant for waiver/reduction of the condition of pre-deposit contemplated u/s 7-O of the EPF and MP Act.

The appeal has been filed challenging the order dated 10.11.2020 clarified by order dated 08.01.2021 passed u/s 7A of the EPF and MP Act by RPFC Gurgaon by which the appellant/establishment has been directed to remit PF dues of its employees amounting to Rs. 6,15,282/- for the period 03/2010 to 03/2014.

Being noticed the respondent appeared through its counsel and participated in the hearing on admission and consideration of an application filed u/s 7O of the Act without filing any written objection.

On behalf of the appellant it has been stated that the commissioner by notice dated 15.04.2014 initiated inquiry u/s 7A of the Act and the authorized representative of the establishment attended and participated in the said inquiry on several dates. It was alleged that the establishment covered under the Act defaulted in payments for a pretty long period i.e. from 03/2010 to 03/2014. The establishment produced all the documents before the EO which included the attendance, salary and wage registers, bill vouchers, and book of accounts. Though it was pleaded that the establishment has availed the service of manpower supplies contractors, namely unique services who has been allotted a separate PF code No., the persons so

engaged through the contractor are not the employees of the appellant/establishment and the appellant is no way responsible for deposit of Pf contribution of those employees. The commissioner did not consider the submissions nor peruse the documents filed. The order challenged in this appeal is not based upon any reasoning but solely based upon the report of the EO. The order so passed is patently illegal and the appellant has a strong case to argue with a fair chance of success. If the impugned order would not be stayed, serious prejudice shall be caused.

The Ld. Counsel Mr. Panda representing the respondent during hearing submitted that the impugned order itself reflects the perusal of the documents filed by the appellant before the EO. The commissioner after examining the matter from all possible angles passed the impugned order which is self explanatory and based upon sound reasoning. While supporting the impugned order he prayed for a direction to the appellant for making deposit of the 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. For the same, it needs to be considered that the period of default in respect of which inquiry was initiated was from 03/2010 to 03/2014. The amount assessed 6,15,282/-. There is no mention in the order about the basis of the calculation arrived at and identification of the beneficiaries. Without going to the other details 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 M/S Banars Valves Ltd. & Others vs. Commissioner of Central Excise, decided by the Hon'ble Supreme Court wherein it has been held that **“if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.”** Besides that, considering the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances into consideration an order need to be passed on the petition filed u/s 7O of the Act. The Hon'ble High Court of Bombay in the case of **MorirokuUt 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 have held that** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it. The Hon'ble Apex Court in the case of Banaras Valves referred supra have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the

circumstances warrant. The appellant of this matter has not pleaded or shown any material to presume undue hardship except the plea that the commercial activities of the establishment has been slowed down.

Thus considering the submission of the parties, 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 20%. Accordingly, the appellant is directed to deposit 20% of the assessed amount within 3 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 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 orders till disposal of the appeal. List the matter on 14 - April - 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