

**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-2/04/2021**

M/s R.R. Enterprises

Vs.

Appellant

APFC, Gurgaon

Respondent

**ORDER DATED:- 16.03.2021**

Present:-

Shri P.R Yadav, Ld. Counsel for the Appellant.

Shri Chakradhar Panda, Ld. Counsel for the Respondent.

This order deals with the admission and a separate petitions 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 both the petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 8.12.20, and the appeal was filed on 15.1.21. Thus the office has pointed out that 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 impugned order has been passed by the commissioner without considering the submission made and solely basing on the report of the E O. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also

submitted that authorized representative of the establishment as directed produced all the records before the E O, who after perusing the same prepared a report and produced the same before the commissioner. Not only that the commissioner while passing the order had never made any effort of analyzing the proposition of law and the decisions of the Hon'ble S C, as pointed out by the AR of the establishment. In fact the commissioner took a wrong view of the matter in deciding that PF contribution is also payable on the House Rent Allowance paid to the employees. Citing various judgments of the Hon'ble S C, he 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 appellant during this difficult time. He there by prayed for waiver of the condition of pre deposit canvassing that the Tribunal has the discretion to do so in the facts and circumstances of this case.

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. He further argued that the appellant establishment has intentionally bifurcated the gross salary of it's employees to basic and house rent allowance to avoid contribution on basic salary and dearness allowances. The basic salary paid to it's employees is not in accordance to the notification of the appropriate Govt. The appellant has not made out any convincing circumstances for waiver of pre deposit. He thus argued for rejection of the petition filed u/s 7O of the Act. The appellant has pleaded that the EO made a report

recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance for the eligible employees and the commissioner has accepted the report in toto, which makes the impugned order illegal.

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 observe that the appellant has a strong arguable case in this appeal. Hence considering the period of default, the amount assessed and the prevailing circumstances 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 Rs 2,00,000/- 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 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 order till disposal of the appeal. List the matter on for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly. List the matter on 04-May-2021 for reporting compliance.

Sd/-  
Presiding Officer