

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Justice Ravindra Nath Kakkar

CGIT-1/EPFA/06 OF 2018

M/s. Bhuwalika Steel Industries Ltd ... Appellant
Vs.

Assistant Provident Fund Commissioner ... Respondent
Thane

Presence:

For the Appellant : Mr. H.L. Chheda (A.R)
For the Respondent : Mr. Sunil Surana, Adv.

Mumbai, dated 5th August 2021.

JUDGEMENT

This appeal is filed by the Appellant u/s 7(i) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act') against the order dated 04-04-2016 passed by Assistant Provident Fund Commissioner – Thane u/s 7-A of the Act.

2. Along with the appeal, Appellant has filed an application for condonation of delay on the ground that delay is due to inadequate knowledge of the provisions of the Act and further such delay is not willful but was due to circumstances which were beyond the control of the Appellant. There is delay of 812 days in filing this appeal.



3. Learned counsel representing Respondent opposed the application stating that the delay is more than 800 days when in fact the appeal before the Tribunal is to be filed within 60 days of passing of the order. Learned counsel relied on the decision in the case of Manganga Sahakari Sakhar Karkhana Ltd. vs APFC – W.P. No. 2101/2014 rendered by Hon'ble Bombay High Court.

4. Authorized representative of the Appellant on the other hand submitted that provisions of the Limitation Act, 1963 are attracted to the Appeal u/s 7-A of the Act read with provisions of EPF Appellate Tribunal Rules, 1997. Next submission of the Appellant is that section 5 of the Limitation Act, 1963 will apply.

5. Heard both the parties.

6. It is relevant to mention that the Act of 1952 provides that the appeal should have been filed within sixty days from the date of order or from the date of receipt of order. It also provides that the period of limitation can be extended for a further period of sixty days provided sufficient grounds have been shown for the delay in filing appeal.

7. It is pertinent to mention that the power conferred under Section 5 of Limitation Act, 1963 to condone the delay or to extend the period of limitation beyond the period of sixty days is excluded.

8. In the decision of Manganga Sahakari Sakhar Karkhana Ltd. vs APFC (Writ petition 2101/2014), Hon'ble Bombay High Court specifically laid down that the applicability of relevant provisions of Section 5 of Limitation Act, 1963 to an appeal filed u/s 7(i) of the Act stands excluded.

9. Further to add in Kerala State Defense Service Cooperative Housing Society Ltd versus APFC (2015) LLR 245 (Karn. HC) wherein it held that the Limitation Act, 1963 is not applicable for appeals before EPF Tribunal. Moreover, in Bihar State Industrial Development Corporation versus EPF Organization (2017) LLR 605 (Patna High Court), it



was held that appeal in EPF Tribunal cannot be filed beyond 120 days since Limitation Act, 1963 is not applicable for filing appeal in Tribunal. Also, in M/s Port Sharmik Cooperative Enterprise Ltd versus EPF Organization (2017) LLR 1049 (Cal HC), it was held that delay of 60 + 60 = 120 days for filing appeal is not to be condoned.

10. Applying the ratio of the above cited judgments, this Tribunal finds that in the present case the impugned order is passed on 04-04-2016 after following the due procedure with representative of the Appellant having participated in the inquiry proceedings u/s 7-A of the Act. The present appeal is filed on 25-06-2018 i.e. after more than 800 days of passing of the impugned order. It is established that this appeal is filed beyond 120 days that is 60+60 days which is clearly barred by the limitation. Even otherwise, the reasons mentioned in delay condonation application is found to be not sufficient but highly time barred.

11. Hence, I am of the considered view that this appeal is clearly barred by limitation and there is no question of condonation of delay. Therefore, the appeal is rejected as time barred.

12. Following order is passed: a. Application of condoning the delay is rejected b. The appeal being time barred is rejected and hence disposed. 13. The copy of the order be sent to both the parties, file be consigned to the record room after due compliance, and this order be uploaded over official web-portal of this Tribunal.




(JUSTICE R.N. KAKKAR)
PRESIDING OFFICER