

**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-1/24/2019

M/s Quami Patrika

Appellant

VS.

APFC, Delhi (North)

Respondent

ORDER DATED:-24.03.2021

Present:- Shri S.P Arora & Shri Rajiv Arora, Ld. Counsel for the Appellant.
Shri Narender Kr. Singh, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition 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 the petition being served on the respondent, learned counsel for the respondent Sh. Narender Kumar appeared and participated in the hearing held on 12.2.20, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 31.12.18 by the APFC, Delhi(North) and was communicated to the establishment on the same day. Being aggrieved, the establishment filed an application u/s 7B of the Act praying review of the order dt 31.12.18, which was rejected on 25.2.19. There after the appeal was filed on 08.04.19. The office has pointed out that there is no delay in filing of the appeal if the period of limitation is counted from the date when the order u/s 7B was passed.

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 without identifying the

beneficiaries. The appellant establishment is a proprietorship concern engaged in publication of a small tabloid with a meager to moderate circulation. At no point of time it had employed 20 or more persons as its employees. Majority of the employees are trainees, who work for a short duration like one month or so and leave. The establishment had submitted an online application for allotment of EPF Code No and the EPFO had issued an online provident fund code no intimation letter in which it was mentioned that the same is valid for three months from the date of issue and based upon the remittance, inspection and submission of all the documents, certificate of coverage and code will be allotted. The establishment could not progress in the business as was anticipated and at no point of time it had employed 20 or more persons. It had never remitted the PF contribution of the few employees working in the establishment. Under the bonafide belief that for noncompliance of PF remittance the temporary code allotted would automatically lapse, the establishment had not taken any step in this regard. More over no official from the respondent department had come for inspection of the establishment when the temporary code was valid. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The notice for inquiry was to find out less deposit of PF contribution by the employer for the period August 2016 to November 2016. But it was later on extended from Nov 2016 to October 2018 and the appellant for the first time came to know about the same from the communication made by the area enforcement officer calling the establishment for production of documents. Though the authorized representative of the establishment had extended all necessary co-operation and produced all the documents as called for, the commissioner while adjudicating the matter took a wrong and misconceived view and without identifying the beneficiaries and without examining the applicability of the Act to the establishment passed the order of assessment on 31.12.18. The entire determination being illegal is liable to be

set aside. The amount so determined is not payable to any one as the beneficiaries have not been identified. The review petition filed was rejected mechanically too. He thus prayed for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act. On behalf of the appellant reliance has also been placed in the case of **APFC vs. M/S Nandalal**, decided by the Hon'ble High Court of Patna to submit that the commissioner can not pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the E O only. He thereby 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 whose commercial activity has come to a virtual halt.. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. To support his submission reliance has been placed 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.”**He also submitted that the appellant has least chance of running away from the reach of Law. 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. Learned counsel Mr. Singh also cited the order passed by the Hon'ble High Court of Madras in the case of **M/S JBM Auto System Pvt. Ltd VS RPFC** , to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment as if tax without paying least consideration to the applicability of the Act to the establishment. Further more the beneficiaries were not identified during the inquiry.

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 need to be considered that the period of default in respect of which inquiry was initiated was from Aug 2016 to Nov 2016 which was later on extended to Oct 2018. The amount assessed 7,06,460/-. 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 **Benaras Valves** referred supra, as well as considering the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances in to consideration. 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** 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 **Benaras 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 hard ship 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 10%. Accordingly, the appellant is directed to deposit 10% 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 28.04.2021 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.

Presiding Officer