

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT-II, ROUSE AVENUE, DISTRICT COURT COMPLEX,
DELHI.**

(Pronounced from Camp Court at Mumbai)

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-2/16/2022

M/s. Rakushka International Pvt. Ltd.

Appellant

VS.

RPFC, Gurugram

Respondent

ORDER DATED:- 05/09/2022

Present:- Shri Jatinder Nagpal & Ms. Muskan Kaushik, Ld. Counsel
for the Appellant.
Shri Chakardhar Panda, Ld. A/R for the respondent.

This order deals with the admission of the appeal, and two separate petitions filed by the appellant praying interim stay on execution of the impugned order and 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, and condonation of delay for the reasons stated in the petitions.

Copy being served on the respondent, learned counsel for the Respondent Shri Chakradhar Panda appeared and participated in the hearing after filing written objection to the petition filed u/s 7O of the Act. Perusal of the record reveals that the impugned order u/s 7A of EPF & MP Act was passed by the commissioner on 08/03/2022, and the appeal has been filed on 20/05/2022. Thus the Registry has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of limitation, it is not intentional but for reasons beyond the control of the appellant and more over it is within the period of 120 days

up to which this tribunal can exercise its discretion for extension of the period of limitation in appropriate cases. He also submitted that in view of the order passed by the Hon'ble S C in suomatto WP(civil) No 3/2020. Granting a further relaxation of 90 days from 28th February 2022, on account of impact of COVID 19, the Tribunal has power to condone the delay.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble SC for condonation of delay. But he submitted that when the impugned order was passed the Tribunal had already started functioning physically and also allowed e-filing. Thus the explanation offered by the appellant is not worthy of acceptance. He also submitted that from the impugned order it is evident that the establishment was participating in the 7A proceeding through out. In such a situation the explanation offered can not be accepted. But as seen from the record the appeal was filed within 120 days from the date of order and the Tribunal has the power of extending the period of limitation up to that time. Hence the objection of the registry with regard to the delay is not accepted.

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 EO. Being called by the commissioner though all the available documents were produced and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also submitted that the inquiry was initiated on the basis of the communication made voluntarily intimating the Respondent about closure of its establishment and transfer of the employees to the sister concern as a measure of business consolidation. In the correspondence made on 27/04/2015, it was intimated that for the transfer of the employees to the sister concern, all the contribution account of the transferred employees be transferred to the newly covered establishment. On the basis of the said intimation an inquiry by the EO was conducted, and the EO took a wrong view of the matter and submitted

the report identifying certain omitted wages forming basis for the inquiry u/s 7A of the Act. During the inquiry the AR for the establishment had made submissions by placing the records to justify that no liability for non deposit is made out against the establishment, the commissioner, ignoring the said submission passed the impugned order. He further submitted that the payment of different allowances though not paid uniformly and to all the employees, was erroneously considered as basic wage by the commissioner. With this he argued that the establishment has no liability for the assessment period and the assessed amount and thus the appeal be admitted waiving the condition of pre deposit.

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. His further submission is that the argument advanced on the merit of the appeal can not be considered now as the Respondent has not filed the reply to the appeal. In his written reply to the 7O application, he has stated that the establishment had attempted to avoid the PF deposit as required under law by increasing the basic wage only, where as the gross wage remained the same as of the previous months. He also argued that no convincing circumstances have been set out for total waiver of the condition of pre deposit.

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. There is no dispute on the facts that the commissioner had made the inquiry on the basis of the report received from the EO. The basis of the calculation is the report of the EO only where in the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance for the employee and there is no uniformity in the allowances paid. But surprisingly the commissioner has not rendered any finding in support of his conclusion while assessing.

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 including the fact that the appellant establishment has closed its business and merged with another concern, it is felt that the circumstances do not justify deposit of 75% of the assessed amount or 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 40%. Accordingly the appellant is directed to deposit 40% 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 CGIT, initially for period of one year 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 01.11.2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Presiding Officer