

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/31/2020

M/s. R.B. Enterprises

Appellant

Through:- Shri Raj Singh Phogat, Ld. Counsel for the Appellant

Vs.

CBT through APFC- Faridabad

Respondent

Through:- Shri Balraj Deewan, Ld. Counsel for the Respondent

Order dated 18.11.2020

This appeal has been filed challenging the composite order dated 24.10.2018 passed by the APFC Faridabad in exercise of the power u/s 14B and 7Q of the E P F and M P Act, assessing Rs19,87,354/- as damage and Rs 11,48,478/- as interest payable by the appellant on account of delayed remittance of EPF contribution of its employees for the period 01.02.2015 to 31.12.2017.

Bereft of unnecessary details the facts pleaded by the appellant are that it is an establishment covered under the EPF & MP Act. It was diligent in contributing to the statutory dues of its employees. No notice dated 09.02.2018 was served on the establishment nor any opportunity was given to set up its defence during the inquiry. The APFC Faridabad in a whimsical manner went on to decide the matter ignoring the absence of the appellant and imposed the damage and interest without giving any finding about the evil intention of the appellant for such delay. By filing a separate application for condonation of delay, it has been stated by the appellant that the impugned order was not served on the establishment and it could know about the same when recovery proceedings were initiated. A certified copy of the impugned order along with the calculation sheet was applied for which was supplied on 10.01.2020 only. On going through the order and calculation several anomalies were detected and soon thereafter the appeal was filed on 04.02.2020, that is within the prescribed time limit computed from the date of knowledge. Thus, the appellant has stated that the arbitrary order passed by the APFC, is liable to be set aside unless the delay is condoned and the appeal is admitted serious prejudice shall be caused to it.

No written objection was filed by the respondent to resist the delay condonation petition. However the learned counsel appearing for the respondent participated in the hearing and took serious objection to the prayer for condonation of delay. He pointed out that the impugned order was passed on 24.10.2018 and the appeal has been filed after a considerable and inordinate delay of about one year and three months. Whereas, the appellant is under obligation to explain each day of delay, in this case it has only taken a bald plea of non service of the order in due time which cannot be accepted to condone such a long delay. But no document has been placed on record in proof of service of the impugned order on the establishment in due time.

The appellant by filing certified copy of the order has taken a stand that the said order came to its knowledge after obtaining the certified copy. The said copy filed along with the appeal contains endorsement which proves that the same was supplied to the appellant on 10.01.2020 and he filed the appeal on 04.02.2020, which is within the prescribed time limit of 60 days when computed from the date of knowledge i.e. 10.01.2020. Hence, in absence of evidence to the contrary it is held that the delay in filing the appeal should be condoned in the interest of justice. Accordingly, the delay is condoned and the appeal being otherwise in order, as per the office note, is admitted.

Another application has been moved by the appellant for an interim order of stay on the execution of the impugned order. This is a composite order levying damage and interest against the establishment. The same has been challenged on the ground of lack of opportunity to set up a defence and explain the alleged delayed remittance. It has also been argued that the establishment on obtaining the certified copy of the calculation forming basis of the order noticed various anomalies with regard to the actual dates of challan and the receipt dates mentioned in the calculation sheet which have a determinative effect on the finding of the commissioner. Unless proper opportunity would be afforded to explain the same, the end result would be miscarriage of justice. The other limb of his argument is that the commissioner has passed a non speaking order without giving finding about the criminal intention or mens rea of the appellant establishment for the alleged delayed remittance. By placing reliance in the case of APFC vs. Management of RSL Textiles India Pvt. Ltd reported in 2017(3)SCC 110, he submitted that the commissioner is duty bound for giving a finding on the mens rea. No finding on this renders the order un-sustainable in the eye of law.

The learned counsel for the respondent submitted that detailed reply by the management need to be submitted meeting all the points raised by the appellant. However, he submitted that when the appellant in spite of receipt of summon when opted not to contest, the same amounts to admission of facts alleged. But this submission of the learned counsel for the respondent does not appeal to the conscience of this Tribunal. Furthermore, the plain reading of the order does not show when the notice was served on the establishment. There is also no reference in the order about the different dates of adjournment. The commissioner has only mentioned that after several adjournments, the final hearing was made on 18.09.2018 and order was passed on 23.10.2018.

This appears to be a very cryptic order, where the commissioner has not discussed a word about the submission of the department on the delayed remittance. It appears as if the commissioner went on accepting the report of the EO entirely without applying his mind while discharging a quasi judicial function. The Hon'ble Supreme Court in the case of Shri Swamiji of Sri Admar Mutt vs The Commissioner Hindu Religious and Charitable Endowment Dept reported in AIR 1980 SC 1 have held that reason is the soul of the law and when the reason of any particular law seizes, so does the law itself.

In this matter the impugned order is completely silent about the mens rea of the appellant for the delayed remittance. Similarly the commissioner has omitted to give a finding as to why the EO report was accepted in toto or why the department had failed to adduce any evidence. The Hon'ble Supreme Court on repeated occasions i.e. in the case of RSL Textiles referred supra and also in the case of McLeod Russel India Pvt Ltd vs. Regional Provident Fund Commissioner reported in 2014 SC 527 have held that when there is no finding rendered on the mens rea or actus reus on the part of the employer, the order becomes illegal. Not only that the practice of accepting the EO report in toto has also been disapproved by the court in the case of Mineva stores vs RPF, decided by the Hon'ble High Court of Gauhati reported in 1978 Lab I C Cases 1160.

In this matter taking into consideration all the aspects as discussed in the preceding paragraphs, it is held that the cause of justice would be best served if the impugned order at this stage be set aside and remanded for reconsideration after giving proper opportunity to the appellant to set up a defence and explain the circumstances. Hence ordered;

ORDER

The appeal is disposed off at admission stage. The impugned order is hereby set aside and the matter is remanded for reconsideration by the commissioner after giving due opportunity to the appellant to plead his stand. The commissioner is also directed to give finding on the mens rea of the establishment for the delayed remittance, in case it is found liable for damage and pass a speaking order. Since, it is a composite order the finding with regard to the interest is also set aside and the commissioner is directed to dispose of the matter strictly within three months from the date of receipt of the order.

Sd/-
(Presiding Officer)