

**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-1/39/2020

M/s. Rasaas

Appellant

Through:- Sh. K. K. Pandey, Ld. Counsel for the Appellant

Vs.

RPFC& APFC, Delhi (North)

Respondent

Through:- Dr. Subhash C. Gupta, Ld. Counsel for the Respondent.

ORDER DATED 10.12.2020

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal 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, 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 held through video conferencing on 2nd December, 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 30.09.2019, and the appeal was filed on 02.12.20 by email. However, office 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 60 days, it is well within the period of limitation since the date of knowledge of the order dated 15th January 2020 passed u/s 7 B of the Act on the review application filed by the appellant, and this tribunal can exercise its discretion for extension of the period of limitation in view of the order

passed by the Hon'ble Supreme Court in suomoto WP(civil) No 3/2020. Citing the shut down of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for a reason beyond the control of the appellant and the same be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded that in the prevailing situation of COVID 19, it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble Supreme Court for condonation of delay. Hence, taking all these aspects into consideration, it is held that the delay is not intentional but for a reason beyond the control of the appellant. The impugned order was passed by the commissioner on 30.09.2019 and it was received by the appellant on 15.10.2019. The appeal with all probability should have been filed on or before 15.12.2019. But the appellant establishment filed an application for review, which was disposed off on 15.01.2020 and received on 30.01.2020. Hence, the period of limitation for filing the appeal was to end on 30th of March. But before that, lock down started. Hence, it is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble Supreme Court. The petition for condonation of delay is accordingly allowed.

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 previously the employees were considered as exempted employees and had submitted Form 11 expressing their desire not to be enrolled under the EPF Scheme. After the amendment effected from Sept 2014, due to ignorance fresh set of form 11 was not submitted. On receipt of the summon for inquiry, the AR for the establishment pleaded about the same but the commissioner never considered it. Citing various judgments of the Hon'ble Supreme Court 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 on the ground 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. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 11/2012 to 8/2018, and the amount assessed is 20,56,632/-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 the eligible employees from being enrolled under the scheme. Before the commissioner the specific plea taken was that the employees getting basic salary of Rs.12500/ are exempted employees. All the documents including salary register, though, produced before the commissioner, were never considered by him. 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 30%. Accordingly, the appellant is directed to deposit Rs.6,00,000/-which is close to 30% 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 a 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 27th January, 2021 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Sd/-

(Presiding Officer)