

Appeal No. D-2/31/2019

ORDER DATED:- 20 November, 2020

**Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri Narender Kr. Singh, Ld. Counsel for the Respondent.**

This order deals with the prayer made by the appellant for interim stay on execution of the impugned order pending disposal of the appeal.

Facts leading to the appeal in short is that, the Government, by a notification published in the Gazette of India dated 30th Dec 2016, introduced a scheme, in order to give employers an opportunity and incentive to enroll the eligible members not enrolled earlier under the EPF MP Act and scheme. The scheme was applicable to employer already covered or yet to be covered to enroll the employees eligible to be enrolled but not enrolled between the period 1.4.2009 to 31.12.2016, by making a declaration to that effect during the campaign period which was valid from 1.1.2017 to 31.3.2017. In response to the same the appellant applied and EPF code no was allotted to it on 20/3/2017, with retrospective effect and it was directed to comply within 15 days by calculating and depositing the EPF dues of the enrolled employees. The appellant made the deposit within the time stipulated i.e. on 29/3/2017. But the APFC issued a show cause notice dt 20/2/2019 u/s 14B and 7Q of the act calling the appellant to show cause as to why damage and interest shall not be levied for delayed remittance of the dues for the period 1/3/1996 to 18/2/2019.

The representative of the appellant appeared and apprised that the actual period of default is 2/2016 to 4/2018 and not the period as mentioned in the notice. It was further submitted that as per the scheme of 2017 the appellant was allotted the code no w.e.f. 3/2017 and the default period being from 2/2016 only it is liable to pay damage @Rs 1 per year of default as provisioned under the scheme. But the commissioner did not consider the submissions and proceeded to pass the impugned order which is contrary to the provisions and intent of the scheme. The appellant has further submitted that damage of Rs 1 and interest of Rs 121 were separately deposited through challans and brought to the notice of the commissioner which were never considered by him. Thus, challenging the impugned order as an outcome of non application of mind and against the norms and scheme of 2017 scheme, a prayer has been made to stay operation of the said order pending disposal of the appeal.

The learned counsel representing the respondent counter argued the submission of the appellant with a submission that all the submissions made by the appellant before the APFC were given due consideration and a reasoned order has been passed by him. Describing the EPF & MP Act as a beneficial legislation which aims at the benefits of the employees only, he submitted that the pleas taken can be taken into consideration during merit hearing of the appeal. Any stay order if would be passed at this stage the same will have the

effect of defeating the purpose of the beneficial legislation which aims at the benefit of the employee. Hence, no stay order should be passed. He also submitted that damage is levied as a punitive measure to prevent recurrence of the default, whereas interest is levied to make good of the loss suffered by the employee. Both being for the benefit of the employees no stay order should be passed.

On hearing the submission made by both the counsels a decision is to be taken on the relief of stay as prayed by the appellant. The factors which are required to be considered for passing the interim order include the period of default and amount of damage levied in the impugned order. In the case of Shri Krishna vs. Union of India reported in 1989(104)(DEL), the Hon'ble High court of Delhi have held

“The order of the Tribunal should show if the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insists on the deposit of the amount, it would amount to undue hardship”

In this case the period of default as seen from the impugned order is from 2/2016 to 4/2018 and the damage and interest levied are Rs59478 and Rs32571 respectively, which are not huge. But the appellant has disputed the same for the incentive allowed to the employer under the scheme of 2017. The relevant provisions of the scheme was pointed out by the learned counsel for the appellant which spells out the incentives available to the employer for the voluntary action of declaration and enrolling the eligible employees for the relevant period stated under the scheme. As per the scheme the damage to be paid by the employer in respect of the employees for whom declaration has been made under the campaign shall be at the rate of Rs 1 per year, and no administrative charges shall be collected for the said period. The appellant has filed the copy of the challan showing deposit of damage as per the prescribed rate. The respondent has not disputed the stand of the appellant that the code no ws obtained and deposit was made by the appellant pursuant to the scheme of 2017. There is also no dispute that the privileges guaranteed under the scheme are available to the appellant establishment. Hence all these aspects taken together makes out a strong prima facie case in favour of the appellant, making out a good chance of success in the appeal.

Hence it is held that there shall be an interim order of stay on the execution of the order passed u/s 14 B only, pending disposal of the appeal. But the said order of stay shall not be unconditional. Appellant is directed to deposit Rs10000/ as a pre condition for stay by way of challan within three weeks from the date of this order, failing which no stay order will operate in respect of the 14B order. The interim stay earlier granted shall continue till then. Call the matter on 14/12/2020 for compliance of the direction given in this order.

Sd/-

Presiding Officer