

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty
Presiding Officer

Sameer Upendra Parikh

...Appellant

Vs

1. A.P.F.C., Vashi

... Respondent

2. M/s. S2S IT solutions Pvt. Ltd

Presence:

For the Appellant : Mr. H.L. Chheda(A.R)

For the Respondent : Mr. Vinod Joshi, Adv.

ORDER

This order deals with the 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 on 14/10/2022 through video conferencing. Perusal of the office note reveals that the impugned order was passed on 12/07/2021 and the appeal has been filed beyond the prescribed period of limitation. Thus the registry has objected to the

maintainability of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of limitation in view of the order passed by the Hon'ble SC in suo moto WPC No3/2020. The learned counsel for the Respondent fairly conceded to the condonation of limitation granted by the Hon'ble SC. Hence the delay in filing the appeal is condoned.

While moving the application filed u/s 70 of the Act the learned AR for the appellant submitted that the assessment against the establishment named M/S S2S IT Solution Pvt Ltd who is the Respondent no 2 of this appeal. The appellant is the ex- Director of the establishment. He had resigned from the post and a Board Resolution to that effect was passed on 01.04.2015. The respondent no 1 initiated the inquiry against the Appellant as well as Respondent no 2 u/s 7A of the Act and passed the ex parte order dt 12/07/2021 against the appellant without giving him the opportunity for the final deposition. Having come to know about the order the appellant approached the Respondent no 1 to delete his name from the order and fixing any liability on him as the ex Director. But the respondent no 1 by letter dt 21.02.2022, rejected the request of the appellant. On 14.03.2022, the Respondent No 1 served a notice on the appellant as a part of the recovery action, asking him to furnish details of his assets. Being aggrieved and apprehensive, the present appeal has been filed wherein a prayer has been made to admit the appeal waiving the condition of pre deposit and an interim order of stay on the execution of the impugned order till disposal of the appeal.

The learned counsel for the respondent has raised several objections in his reply submission including the maintainability of the appeal. During course of argument, he submitted that the other petition filed by the appellant for waiver/reduction of the pre deposit amount contemplated u/s 7 -0 of the Act deserves rejection as the appellant has not made out any exceptional circumstances making it imperative on the part of the Tribunal to exercise its discretion in this regard. The learned counsel for the appellant submitted that the impugned order has been passed without giving opportunity to the

appellant to set up his case. He being the ex-director no liability can be fastened on him and any direction for compliance of the provision of sec 70 would be harassing and pre judicial to him in his personal capacity.

On behalf of the respondent argument was advanced that the provision of law laid u/s 70 of the Act mandates deposit of 75% of the assessed amount as a pre condition for filing an appeal and the same should not be reduced or waived as a matter of routine unless good causes are shown for the same.

On a plain reading of the provision of sec 70 of the Act shows that no appeal by the employer shall be entertained unless he makes deposit of 75% of the assessed amount. The direction is mandatory in nature. But the provision of law laid u/s 71 of the Act clearly prescribes that any person aggrieved by the order passed as mentioned in that section can file an appeal challenging the order. It means, the act has made provision for appeal by other persons than the employer. The provision of sec 70 primarily fastens the liability of depositing 75% of the assessed amount on the employer who files the appeal and certainly not on all other persons who being aggrieved by the impugned order decide to file the appeal. Such an interpretation of law laid u/s 70 would have the effect of throttling the right of an aggrieved person for filing the appeal.

Coming to the facts of the present appeal, the documents filed along with the appeal prima facie shows that the appellant was the ex Director of the appellant company who has been discharged of his duties by company's Board Resolution dt 1/04/2015, i.e much prior to the initiation of the inquiry and as such he is not liable for any dues payable by the company in his personal capacity. But the Respondent has served recovery notice on him forcing him to file the present appeal.

More over the company is a legal person and as has been held in several pronouncements by the Higher courts, the director having a fiduciary relationship with the company cannot be held personally

liable for any liability of the company. Here the appellant is the ex director. Any direction to him for compliance of the provision of sec 70 would certainly cause undue hardship to him. The Hon'ble High Court of Bombay in the case **of *Moriroku Ut 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** have held that the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

Thus, considering the submission made by both the parties, the appeal is admitted waiving the condition of pre deposit prescribed u/s 70 of the Act. It is directed that there would be an interim stay on the execution of the impugned order passed u/s 7A, pending disposal of the appeal.

PRESIDING OFFICER
CGIT NO.1, MUMBAI