

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

Present:

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

Appeal No. D-2/01/2022

M/s Tenneco Automotive India Pvt. Ltd.

Appellant

VS.

APFC/ RPF, Gurugram

Respondent

ORDER DATED:01/02/2022

Present:- Shri S P Arora & Rajiv Arora, Ld. Counsel for the
Appellant.
Sh. B. B. Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission and a separate petition filed by the appellant praying 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 the petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held through video conferencing, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 28.10.2021 and the appellant filed the appeal on 30.12.2021 on line. The Registry, thus, has reported that the same has been filed beyond the prescribed period of limitation. But the appellant has stated in the memo of appeal that the impugned order was communicated by e-mail on 12.11.2021. Hence, the appeal has been filed within the prescribed period of limitation.

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 inquiry was initiated on the basis of the report of the EO alleging non compliance of the statutory deposits under the Act in respect of NEEM Trainees who have been excluded

from the purview of the EPF and ESI Acts. The respondent when served show cause notice on the appellant establishment, a proper and detail reply was submitted. But the commissioner never considered the same. On the contrary it was observed in the impugned order that allowances paid to other employees were not computed for deposits under the Act, though the notice of inquiry was in respect of NEEM trainees only. Documents produced during the inquiry showing the duration of engagement of those trainees and deposits made during the entire period of inquiry in strict compliance of the provisions and of EPF Act were not considered at all. None of the submissions were considered while passing the impugned order and the commissioner without going through the details of the written submission passed the order which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the objection raised by the appellant. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment.

To elaborate his submission he argued that the appellant is a manufacturer of shock absorbers used by Automobile manufacturers and for that purpose it has set up a facility site at Bawal with the sole objective of imparting trainings to students pursuing Technical education. The Govt. of India lunched the National Employability Enhancement Mission in 2013 and in the line of the Scheme the AICTE, who is the implementing Authority of the scheme issued a Regulation in 2013. The said regulation was replaced by NEEM Regulation 2017, issued by AICTE. According to this regulation, provision has been made for an arrangement between the organization/industry and NEEM facilitator having clear criteria for enrollment. The students or trainees sign a contract with the facilitator and undergo the training with the organization/ industry and the later makes payment to NEEM facilitator who in turn makes a payment of a consolidated amount of stipend to the trainees after deducting a nominal amount of administrative charges. This arrangement neither creates employer employee relationship nor statutory dues are payable under the EPF or ESI act as mentioned explicitly in the regulation. It is the facilitator who issues

certificates to the trainees at the end of the training. Though during the inquiry document showing payment to the NEEM facilitator according to the bill raised were produced, the commissioner without considering the same and with a pre occupied mind passed the impugned order.

He thereby submitted that all these aspects if would be considered, the appellant has a fair chance of success. Thus, 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. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

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. He argued that during the period under inquiry, as observed by the EO, more than 60% of the total workforce have been shown as trainees and the establishment intentionally did so to avoid PF liabilities. By drawing attention of the Tribunal to the circular issued by the Additional CPFC dt 12.10.2015, he submitted that the trainees getting placement in the Industry after the training are to be treated as employees and provisions of the Act very well applies to them. In this case the appellant establishment had engaged the trainees in the establishment but described them as trainees.

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 persons in respect of whom the establishment has not complied the PF contribution had joined as Trainees. At this stage no opinion can be formed on their status after completion of the Training. At the same time it need to be considered that the period in respect of which

inquiry was initiated are from 7/18 to 9/2019 and the amount assessed is 1,14,59,596/- and a part there of amounting to eleven lakh has already been deposited by the appellant. Without going to the other details as pointed out by the appellant for 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 extend protection to the appellant pending disposal of the appeal. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle as has been laid down by the Apex court and considering the grounds taken in the appeal, the period of default, the amount assessed, 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 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. There would be an interim stay on the impugned order till the next date. Call the matter on 22-March-2022 for compliance of the direction.

(Presiding Officer)

