

**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.

ATA No.D-1/04/2020

ORDER DATED:-25.03.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri Dheeraj Kumar Singh, Ld. Counsel for the Respondent.

The appeal challenges the order dated 22.11.19 passed by the APFC Delhi, u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 3,30,088/-towards damage for delayed remittance of EPF dues of it's employees for the period 31.3.2014 to 08.08.. Notice being served on the respondent, learned counsel Shri Dheeraj Kumar Singh appeared and participated in the hearing held on 13.2.20.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 22.11.19 and the appeal has been filed on 15.01.20 i.e within the period of limitation. A separate petition has been filed by the appellant praying stay on the execution of the impugned order pending disposal of the appeal.

The learned counsel for the appellant during course of argument submitted that the impugned orders u/s 14B is illegal and liable to be set aside as the commissioner while discharging the quasi judicial function had failed to assign reasons for his finding. Not only that the, basis of calculation was not furnished, nor the submissions made to the commissioner on different dates by the authorized representative of the establishment were considered or controverted by the department. He also submitted that the commissioner has also failed to discuss and give a finding on the mensrea of the establishment which is contrary to the observation of the Hon'ble S C in the case of R S L Textiles. The further argument advanced by the appellant is that the written submission to the show cause notice was submitted on 05.09.19 i.e after the hearing was closed and the matter was reserved for orders on 30.08.19. But the written submission though filed before the order was passed was never taken into consideration. the commissioner never considered the mitigating circumstances indicated in the submission nor gave any finding on the mensrea which makes the impugned order not sustainable in the eye of law. He thereby submitted that the appellant has a prima facie strong case to argue in the appeal and unless the

orders which is executable would be stayed, the relief sought in the appeal would become infructuous.

In his reply the learned counsel for the respondent submitted that the commissioner had given sufficient opportunity to the establishment to explain the circumstances causing delay in remittance. No reply was submitted during the inquiry. The commissioner has rightly passed the order without considering the submission made after closure of the inquiry and submitted in absence of the department Representative. While arguing on the legislative intention behind the beneficial legislation, he submitted that no order should be passed to stay execution of the impugned order. He also argued for rejection of the prayer of stay describing the impugned order as proper and based upon good and sound reasoning.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage since the delay in remittance is completely attributable to the delay in release of Bills by the clients. The representation explaining the mitigating circumstances were never considered during the inquiry. He thereby submitted that the appellant has a good case to argue in the appeal having a fair chance of success.

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 order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insist 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 spreads over almost 4 years, though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the commissioner has omitted to give a finding on the mensrea of the appellant for the delayed remittance, which is against the decided principle of law.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 30% of the assessed damages as a pre condition for grant of stay within 4 weeks from the date of communication of the order failing which there would be no

stay on the impugned order. The said amount shall be deposited by the appellant by way of Challan Call the matter 29.04.2021 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. Interim order of stay granted earlier shall continue till then.

Presiding Officer