

**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-2/32/2019

M/s Viraj Exports Pvt. Ltd.

Appellant

VS.

CBT & APFC, Noida

Respondent

ORDER DATED:- 08/03/2021

Present:- Shri Rajiv Shukla, Ld. Counsel for the Appellant.
Shri Narender Kr. Singh, Ld. Counsel for the Respondent.

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

Notice being served on the respondent, the learned counsel Shri Narender kr. Singh representing the respondent appeared and participated in the hearing .

The appellant has challenged the order date 17/10/2019 passed u/s14B &7Q of the EPF &MP Act by the APFC Noida, wherein the appellant establishment has been directed to deposit Rs18,81,448/ as damage and Rs11,33,314 as interest for delayed remittance of the EPF dues of it's employees for the period 9/2014 to 12/2018. Alleging that the order is a composite order passed in a mechanical manner without assigning good reasons for imposition of penal damage, it has been canvassed that the mitigating circumstances shown by the representative of the appellant were never considered by the commissioner while adjudicating the matter. The learned counsel for the appellant further submitted that initially the inquiry by a common notice was started for the period 11.5.15 to 6.5.19.it was subsequently revised. The AR for the appellant submitted before the commissioner that the client of the appellant went Bankrupt and was before the BIFR, which led to fund crunch of the appellant causing delay in remittance. Though documents to that effect were placed on record, never taken into consideration. Citing the judgment of the Hon'ble SC in the case of APFC VS Management of RSL Textiles ltd it was submitted that the order passed by the commissioner is illegal and not sustainable for not discussing the mensrea on the part of the appellant for the delayed remittance. He also submitted that the commissioner though fully aware of the law laid down by the Hon'ble SC in the case of ESI Corp &others vs. H.M.T. Ltd, went on to hold that as decided in the case of Chairman SEBI vs. Shri Ram Mutual Fund, mensrea is not

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material for delayed remittance creating liability for damage. Thereby the learned counsel for the appellant submitted that the impugned order suffers from patent illegality and the appellant has a strong case to argue having fair chance of success. If the execution of the impugned order would not be stayed, serious prejudice shall be caused to the appellant.

The learned counsel for the respondent, while supporting the impugned order submitted that the very purpose of EPF & MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to act as a deterrent to the omission and delay caused by the employer in deposit of the dues. He thereby submitted that any order of stay if allowed would defeat the purpose of the Act.

During course of argument the learned counsel for the appellant submitted that the appellant is a garment export company and mostly depends on the payment by its clients. Since the appellant often encounters delay in getting its Bills cleared, sometimes delay occurs in remittance of the EPF dues. The same is neither intentional nor attributable to the establishment.

There is no dispute on facts that the remittance has been made after a considerable time. The appellant though has offered an explanation of its bonafides, no document to that effect has been filed, to which the learned counsel Mr. Singh took serious objection. On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the prayer of interim stay made by the appellant who has argued extensively about the undue hardship likely to be caused if the impugned order is not stayed. The Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt Ltd vs. Union Of India** reported in 2005 SCC page 1 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.

In this case the period of default as seen from the impugned order is from 9/14 to 12/18 and the amount of damage assessed is equally big. 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. Furthermore in the case of **Mulchand Yadav and Another vs Raja Buland Sugar Company and another** reported in (1982) 3 SCC 484 the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

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Hence in this case the appeal being filed within the period of limitation, the same is admitted. It is directed that there should be an interim stay on the execution of the impugned order pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit Rs 5,60,000/ which is little less than 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e on 05-April-2021 for compliance of the direction. Interim stay granted earlier shall continue till then. it is made clear that there would be no stay on the interest assessed u/s 7 Q of the Act as the order passed u/s 7Q is not appealable and at this stage no opinion can be formed if the orders are composite orders since two separate orders have been passed. L.C.R. be returned to the Respondent.

Done
8/3/2021

Done
8/3/2021
Presiding Officer