

**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-1/17/2020

M/s. Ambitious Pens Pvt. Ltd.

Appellant

VS.

APFC, Delhi (West)

Respondent

ORDER DATED:- 06.01.2022

Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.
Shri Prem Prakash, Ld. Counsel for the Respondent.

This appeal has been preferred u/s 7I of the EPF and MP Act challenging the order dated 19.12.2019 passed by the APFC Delhi West directing the appellant to deposit Rs.14,56,351/- towards penal damage for the delayed remittance of the EPF dues payable as the employer in respect of its employees. When the matter came up for admission it was found that the reply by the respondent has already been filed. Hence, the argument was heard being advanced by the counsel for both the parties. The stand of the appellant according to the narrative in the appeal memo in short is that the notice dated 04th July 2019 was served on the establishment for an inquiry contemplating imposition of damage. On receipt of the said notice the representative of the establishment appeared before the commissioner and filed a written submissions on 25.03.2019 and on 02.04.2019 wherein it was pleaded that the proposed inquiry for the period 03/2008 to 10/2018 is overlapping the period of inquiry earlier made in which an order dated 15.07.2015 was passed by the commissioner levying damage. Challenging the said order ATA No. 867/04/2015 is pending before the Appellate Tribunal and stay has been granted. But the commissioner never took into consideration the submissions made by the appellant establishment and made a wrong observation in the order that after 6 months time spent in the inquiry the matter was lastly adjourned to 02/04/2019 and on that day none appeared on behalf of the establishment and the hearing was closed for orders to be passed. But the fact remains that on 02.04.2019 the appellant attended the proceeding and had also placed on record some relevant documents. On behalf of the appellant the office copy of the submission made before the commissioner on 02.04.2019 has been filed. The Ld. Counsel for the appellant further submitted that in the

letter communication dated 02.04.2019 available at pay 80 of the appeal memo a request was made for supply of the revised statement for placing rebuttal evidence. Pursuant thereto a re-inquiry was held but no order was passed. She also submitted that the commissioner in a hyper technical manner passed the impugned order for the overlapping period and while passing the order he has not given any finding on the mensrea and calculated the damage in the cryptic order as if it is tax. She thereby submitted that the appellant has a fair chance of success and strong case to argue. Unless the appeal is admitted and the delay is condoned serious prejudice shall be caused.

In his reply the LD. Counsel for the respondent while supporting the impugned order submitted that the establishment is a habitual defaulter and as per their own admission multiple proceeding are pending. He also pointed out about the delay in filing of the appeal and argued for dismissal of the same on that ground alone. Alternatively he submitted that for admission of the appeal and stay on the execution of the impugned order the appellant be directed to deposit 50% of the assessed amount.

Perusal of the record and office note reveals that the impugned order was passed on 19.12.2019 and received by the appellant on 23.12.2019. The appeal has been filed on 20.02.2020. Thus, there is a delay of about 3 days only. Since the appeal has been filed within a period in respect of which the tribunal can exercise its discretion for condonation of delay, the said period of delay is hereby condoned and there being no other defect the appeal is admitted.

The appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about its fair chance of success. But the tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal. The statute unlike the provisions for appeal against an order passed u/s 7A of the Act has not provided for the condition of pre deposit contemplated u/s 7O of the Act. In the case of **Old Village Industries vs. APFC reported in 115(2004)DLT510** the Hon'ble High Court of Delhi have held that for admission of the appeal challenging the order passed u/s 14B a condition of pre deposit in terms of the provisions of section 7O of the Act cannot be ordered.

Keeping in mind the said principle of law and on hearing the argument advanced by the counsel for both the parties an order need to be passed on the interim relief of stay as the appeal has already been ordered to be admitted. The factors which are required to be considered at this stage for the purpose of interim stay of the impugned order are the period of default and the amount of damage levied.

In this case the period of default is from 01.04.1996 to 31.03.2019. Thus, on hearing the argument it is felt proper and desirable that pending disposal of the appeal the amount assessed be protected from being recovered from the appellant. Since, the Hon'ble Supreme Court 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.

In this case it is accordingly directed that there should be an interim stay on the execution of the impugned order levying damage pending disposal of the appeal. But the said interim order shall not be unconditional. The appellant is directed to deposit 10% of the assessed amount of damage through Challan with the respondent within 4 weeks from the date of the communication of the order as a pre condition for stay pending disposal of the appeal. Call on 10.02.2022 for compliance of the direction and hearing of the appeal as reply has already been filed by the respondent.

Presiding Officer