

18.10.2022

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**

MUMBAI

Present

Smt.Pranita Mohanty  
Presiding Officer

M/s. Another Drop WTF ... Appellant  
Vs  
Regional Provident Fund Commissioner ... Respondent  
Kandivali

**Presence:**

For the Appellant : Mr.Manoj Gujjar, Adv

For the Respondent : Mr. Gunjan Choubey, Adv.

**ORDER**

This order deals with the admission of the appeal and the prayer made by the appellant for an interim order of stay on the execution of the impugned order, pending disposal of the appeal and condonation of delay. Registry has pointed out the delay caused in filing the appeal.

Notice of the appeal being served on the respondent, the learned counsel representing the respondent participated in the hearing held through video conferencing and raised objection to the prayer for interim stay.

The appellant has challenged the order dated 17/03/2021, passed by the RPFC Kandivali u/s 14B and 7Q of the EPF &MP Act assessing Rs 3,69,735/- payable as damage and Rs. 1,89,205/- towards interest on account of delayed remittance of PF Dues of it's employees for the period Feb/2011 to November/2013. Describing the same as an illegal order passed in a mechanical manner. The appellant has prayed for admission of the appeal and stay on the execution of the order. It has further been alleged that a show cause notice dated 25.04.2014 was served on the appellant to which reply was submitted stating that there is no intentional or deliberate delay on the part of the appellant. Thereafter,

no response was received from the respondent. On 05.05.2014 another submission was made explaining the unintentional delay and the mitigating circumstances behind the delayed remittance. Though the appellant establishment had paid both the contributions i.e for the employee and the employer from 2011 onwards after allotment of the code No. and the challan copies were filed the commissioner did not take note of the same and passed an order without any finding on the mens rea. No proceeding were held after the written submissions were submitted and no communication was received. Suddenly after 7 years the respondent deducted the proposed damage and interest amount as per the show cause notice from the Bank account of the appellant on 23.11.2021. It was the period of COVID related lockdown and the appellant which runs a hotel was at that time closed for the COVID guideline. Soon after the pandemic situation the appellant came to know about the deduction and addressed a letter by email to the respondent which was never replied. The request for supply of the copy of the impugned order remained unheard. Being aggrieved by the action of recovery, the present appeal has been filed wherein the legality of the order has been challenged and a prayer has been made for admission of the appeal and restraining the respondents from prosecuting the partners for nonpayment of the damage and refund the amount already recovered.

The learned counsel for the respondent by filing a written submission while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation. He also pointed out that the delay in remittance as evident from the calculation sheet is for more than three years. Moreover it is not the case of the appellant that for financial difficulties it had withheld the salary of it's employees. When the salary was paid every month, the appellant has to explain as to why the employees' share deducted was not deposited. Since the appellant had omitted to discharge it's statutory obligation, the commissioner has rightly passed the order. He also submitted that mensrea being a state of mind need to be inferred from the circumstances of a case and the commissioner in this order has given a finding to that effect. The other submission of the learned counsel for the Respondent is that in view of the recent judgment of the Hon'ble SC in the case of *Horticulture Experiment Station, Gonikoppal, Coorg vs. RPFC Civil Appeal No. 2136/2012 decided on 23<sup>rd</sup> Feb 2022* the finding on mensrea is not the essential requirement for imposition of damage.

Perusal of the record shows that the impugned order was passed on 17/03/2021 and the appeal has been filed after the prescribed time under the Rules. Hence the office has raised objection. But for the order passed by the Hon'ble SC in the suo motto WPC no 23/2000 the delay in filing the appeal is condoned and the appeal is admitted. Another prayer has been made by the appellant praying stay on the execution of the impugned order.

Though the appellant has made a prayer for refund of the amount already recovered, the Ld. Counsel for the respondent took serious objection and submitted that the recovery was made after the expiry of the appeal period. Hence, no order

for refund would be in the interest of justice. The argument advanced by the LD. Counsel for the respondent sounds convincing. In view of the fact that Rs. 5,59,490/- has already been recovered from the appellant's Bank account, it is directed that the respondent shall not take any further recovery action against the appellant pending disposal of the appeal.

Call the matter on 25.11.2022 for reply to be filed by the respondent.

PRESIDING OFFICER

CGIT NO.1, MUMBAI