

**BEFORE THE HON'BLE 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.

M/s. Deepali (India) Enterprises

Appellant

Vs.

APFC Delhi, (East)

Respondent

ATA No. D-1/20/2020
ORDER DATED:- 27.10.2021

Present:- Ms. Neha Shrivastava, Ld. Counsel for the appellant.
Shri Narendra Kumar, Ld. Counsel for the Respondent.

This order deals with two separate petition filed by the appellant praying condonation of delay and waiver of the condition prescribed u/s 70 directing deposit of 75% of the assessed amount as a pre condition for filing the appeal on the ground stated therein.

Copy of both the petitions being served on the respondent the Ld. Counsel Shri Narendra Kumar appeared and participated in the hearing without filing any written objection to the above said petition.

The record reveals that the impugned order u/s 7A was passed on 27.03.2018 and the appeal has been filed after an inordinate delay i.e on 27.02.2020. Thus, the registry has objected about the appeal being filed beyond the period of limitation.

A separate petition has been filed by the appellant praying condonation of delay wherein it has been stated that the impugned order is an exparte order and no notice in respect of 7A inquiry was ever served on him. It has been further explained that the appellant was the sole proprietor of the proprietorship firm registered in the year 2001 in the name of M/s Deepali Enterprises. The firm was engaged in business of supply of manpower and performed the business for few months when it voluntarily registered itself with the EPFO. Since the business could not flourish, by letter dated 20.12.2004 it had intimated the EPFO about the closer of the business and also requested for closer of the PF code No. After closer of the business the proprietor, appellant for sometimes worked in the shop and STD Booth of his father and again in 2011 he attempted to run his proprietorship firm. After working for few months since the business

failed, he opted for a private job in 2013. In the year 2015 due to some family dispute his parents disowned him and he was forced to leave the parental house and reside with his family in a rented house at Khichdi Pur Delhi. The family had made a paper publication giving public notice of disowning him. When the matter stood thus the EPF Commissioner by notice dated 31.03.2015 initiated an inquiry u/s 7A for non remittance of the PF dues for the period 03/2001 to 02/2015. The appellant could not know about the proceeding as no notice was ever served in his current address. The commissioner by an exparte order assessed the EPF dues amounting to Rs. 358866/- for the period 01/07/2011 to 01/03/2013. The appellant since had left the ancestral home could not even know about the order or its communication. The mother of the appellant in 2019, on receipt of a recovery notice informed the appellant who then appeared before the recovery officer on 04/01/2019 and received the impugned exparte order. He then filed objection to which the recovery officer paid no heed. Finding no other way on 01.02.2019 the appellant filed one review application invoking the provisions of section 7B of the EPF and MP Act which is still pending with the EPF authority. Despite his request the recovery officer took action in the recovery proceeding which compelled the appellant to file a writ petition bearing no. 2701 of 2019 before the Hon'ble High Court. Though, initially stay was granted, the Hon'ble High Court later on disposed off the said writ application as withdrawn by the appellant, with liberty to approach this tribunal. Hence, the present appeal has been filed.

The Ld. Counsel for the appellant submitted that a bare reading of the impugned order reveals that the said order was passed exparte without least effort of serving the notice on the appellant. Moreover, the commissioner for the absence of the appellant could not consider all the relevant fact and records. The order passed by the commissioner is palpably wrong and has caused serious prejudice to the appellant. He thereby prayed for condonation of delay and admission of the appeal. It has further been explained that the delay in filing the appeal was never intentional but for certain circumstances beyond the control of the appellant.

In his reply the Ld. Counsel for the respondent strenuously argued that the appellant is under the legal obligation of explaining each and every day of delay in filing the appeal. The plea taken by the appellant appears to be vague and cannot be accepted. He thereby submitted that the appeal is hopelessly barred by limitation and should be dismissed.

On hearing the argument advanced by the parties and on perusal of the impugned order it is clear that the proceeding u/s 7A was taken up in an exparte manner by the respondent. The documents filed by the appellant and the paper publication made by the family clearly

shows that the appellant/establishment was initially registered in the year 2000 having its address at Kalyanpuri New Delhi. In the year 2004 when he wrote a letter to the EPFO for closer of his establishment the address given was Kalyanpuri Delhi. In Feb 2011 when he reregistered his firm the address given was Kalyanpuri Delhi. But it is not understood how and why the address of the establishment in the impugned order has been mentioned as 178 Block 14 ground floor LBS Hospital Khichdipur Delhi. The impugned order further shows, that the appellant has not participated in the proceeding leading to passing of the impugned order. Thus, from the circumstances it is evidently clear that the notice for the inquiry was not sent in the address of the appellant where he was residing nor the impugned order was ever served on him. This explains the delay in filing the appeal which needs to be condoned in the ends of justice.

The delay is accordingly condoned for admission of the appeal.

But at the same time it is found that no fruitful purpose will be served by admitting the appeal for hearing on merit when the order was passed exparte. Thus, considering the circumstances it is felt proper to remand the matter to the commissioner at this stage of admission for re hearing of the inquiry after giving proper opportunity to the appellant to setup his defence. Hence, ordered.

ORDER

The delay for filing of the appeal is hereby condoned and the matter is remanded back to the EPFO for fresh inquiry after giving due opportunity to the appellant to setup his defence. The appellant is directed to appear before the commissioner on 15th December 2021 for further progress in the matter. The commissioner is also directed to take all steps to complete the inquiry within 3 months from the date of first appearance of the appellant.

Presiding Officer