

**BEFORE THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
AHMEDABAD**

Present - Sunil Kumar Singh-I,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Date: 01st November, 2023

EPF Appeal (CGITA) No. : 17 / 2023

Dahod Nagar Seva Sadan, Dahod,

Dahod (Gujarat) – 389151

..... Appellant

V

Regional Provident Fund Commissioner - II,

Employees Prvident Fund Orgainzation,

B/h VMC Ward – 6 Office, Akota Stadium Road,

Vadodara – 390020

..... Respondent

Advocate for the Appellant : Shri Sarfarajali B. Saiyad

Advocate for Respondent : Shri Pathik Acharya

ORDER

1. The proposed appellant / establishment has moved delay condonation application for the condonation of delay of 479 days in filing appeal on 29.11.2022 u/s 7-I of Employees' Provident Fund & Misc. Provisions Act, 1952, hereinafter called as 'EPF Act', against two impugned orders dated 29.07.2021 passed seperately by respondent authority in respect of assessment of damages of Rs. 2817054/- u/s 14-B of the Act and interest

of Rs. 1774543/- u/s 7-Q of the Act for the duration from 01/2011 to 10/2019.

2. The appellant has stated that he received the impugned order on 12.10.2021. He has further stated that there was spread of pandemic Covid-19. The records were not available due to non-availability of the concerned employees. Such extra ordinary situation was beyond the control of the appellant. An affidavit of Shri Kamal Kant Prajapati has also been filed on behalf of the appellant / establishment in support thereof.
3. Respondent authority has filed its objections stating that the appeal has been filed much beyond the statutory period and prayed to dismiss the same being beyond the period prescribed under the rules.
4. Perused the records and heard Ld. Counsels for both the parties.
5. Applicant's Ld. Counsel has argued that a lenient view may be taken and the benefit of Section 5 of Limitation Act be given to the appellant in the aforesaid circumstances. He has cited Insulation House V The RPFC, WP (L) No. 3251 / 2004, order dated 09.12.2004 (Bom) and Lingeswaran Etc. V Thirunagalingam, 2022 Live Law (SC) 227 in support of his arguments.
6. Ld. Counsel for the respondent has argued that this Tribunal cannot condone the delay further beyond 60 days after the statutory period as provided under Rule 7 (2) of Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997.
7. Perusal of record shows that both the impugned orders were passed on 29.07.2021 i.e. during the wide spread global pandemic COVID-19. This appeal was filed on 29.11.2022. This Tribunal is aware of the fact that Hon'ble Supreme Court in suo-moto writ petition (c) no. 3/2020, titled re:congizance for extension of limitation, in M.A. No. 21/2022 vide order

dated 10.01.2022, has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The period from impugned orders dated 29.07.2021 to 28.02.2022 has to be excluded as directed by Hon'ble Apex Court. Hence, the calculation of the prescribed period for appeal has to be done from 01.03.2022. Appellant was entitled to file appeal within 60 days i.e. up to 29.04.2022. A further period of 60 days i.e. up to 28.06.2022, could be condoned by this Tribunal under Rule 7 (2) of EPF & Appellate Tribunal (Procedure) Rules, 1997. The total delay comes at about 213 days, which is much beyond the statutory limits prescribed under aforesaid Rule 7 (2).

8. Hon'ble Allahabad High Court in M/s Kushang Security and House Keeping Private Limited V PO, CGIT-cum-Labour Court & Anr., Writ – C No. 6196 of 2019, judgement dated 19.08.2019, has held that EPF Tribunal has no jurisdiction to treat within limitation, an appeal filed beyond maximum time specified in terms of Rule 7 (2) of EPF Appellate Tribunal (Procedure) Rules, 1997.
9. Hon'ble Madras High Court has held in M/s Patina Gold Ornaments Pvt. Ltd. V The Presiding Officer, Employees Provident Fund Appellate Tribunal & Anr., 2022 LLR 916 (MAD), that delay in filing appeal under EPF & MP Act, 1952 beyond prescribed limitation of 120 days is not condonable.
10. Hon'ble Telangana High Court in M/s Zieta Technologies Pvt. Ltd. V The Union of India & Ors., 2023 LLR 456 (TEL) has held that the EPF Appellate Tribunal has no power to condone delay in filing of appeal against order of EPF authorities beyond 120 days.

11. Single Bench of Hon'ble Delhi High Court in M/s Reliable Air Conditioning V APFC & Anr., WP (C) 12783/2019 & CM APPL. 52243/2019, Judgement dated 07.04.2021, has held that the Section 5 of Limitation Act is excluded and cannot be called upon in and for condoning delay beyond a total period of 120 days in EPF appeal.
12. The division bench of Hon'ble Delhi High Court in Assistant Regional Provident Fund Commissioner V Employees Provident Fund Appellate Tribunal, 2005 (83) DRJ 647 (DEL-DB) has, after referring three Judges Bench of Hon'ble Supreme Court in Commissioner of Sales Tax, U.P., Lucknow V Prason Tools and Plants, Kanpur, (1975) 4 SCC 22 and three Judges Bench of Hon'ble Supreme Court in ONGC Ltd. V Gujarat Energy Transmission Corporation Ltd., (2017) 5 SCC 421, held that the provisions of Section 5 of the Limitation Act is expressly excluded as specific provision is made in the form of Rule 7 (2) of EPF & Appellate Tribunal (Procedure) Rules, 1997.
13. The maxim "Ut res magis valeat quam pereat" is an important principle of interpretation of statutes. It means that the statutes must be construed so as to make them effective and constructive and not ineffective or destructive. The EPF & MP Act, 1952 is a beneficial legislation for providing social security to employees working in the establishment to which the Act applies. The legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with the intention to curb the delay and to protect the interest of marginalized workmen in labour matters, legislature left it to their rule making authority to make provision for limitation. The rule making authority under Rule 7 (2) of EPF & Appellate Tribunal (Procedure) Rules, 1997 has specifically provided that if there is a delay of 60 days, on showing

sufficient grounds for delay of 60 days, that can be condoned. The facts of Insulation House (supra) and Lingeswaran Etc. (supra) referred by the appellant are not related with EPF Appeals and thus distinct from the facts of the present case, hence for no avail.

14. The delay is of 213 days in filing this appeal after exclusion of period as directed by Hon'ble Apex Court in aforesaid suo-moto writ petition (c) no. 3/2020. This Tribunal has no authority to condone the delay beyond total period of 120 days as prescribed under rule 7 (2) of EPF & Appellate Tribunal (Procedure) Rules, 1997. The delay condonation application is thus rejected.

(Sunil Kumar Singh-I)
Presiding Officer
CGIT-cum-Labour Court /
EPF Appellate Tribunal
Ahmedabad