

**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. Gaurav Enterprises

Appellant

Vs.

CBT
RPFC, Delhi East
Aruna Asaf Ali Govt. Hospital
Deendayal Upadhyay Hospital
Guru Gobind Singh Govt Hospital
Dr. Baba Saheb Ambedkar Hospital
Delhi State Civil Supplies Corporation Limited
Department of Food Supplies and Consumer Affairs

Respondent No.1
Respondent No.2
Respondent No.3
Respondent No.4
Respondent No.5
Respondent No.6
Respondent No.7
Respondent No.8

ATA No. D-1/19/2021

ORDER DATED:- 03.08.2021

Present:- Shri Rajiv Shukla , Ld. Counsel for the Appellant.
Shri S.N Mahanta , Ld. Counsel for the Respondent No.1 and2.
Shri Waris Ali, Ld. Counsel for the Respondent No.5.

The appeal challenges the orders dated 26.05.2021 passed by the RPFC, Delhi, under section 14B and 7Q of the EPF&MP Act wherein the appellant/establishment has been directed to deposit Rs 69,21,490/- as damage and Rs. 40,81,884/- as interest, for delayed remittance of EPF dues for the period 11/2013 to 03/2019.

Being noticed the respondent entered appearance and the Counsel representing the respondent participated in the hearing on admission, and interim stay, as has been prayed by the appellant.

The learned counsel for the appellant Shri. Shukla mainly canvassed two points for challenging the impugned order i.e the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner who proceeded to pass a nonspeaking order mechanically. During the preceding years of the period under inquiry, the appellant had to undergo acute financial hardship and company went into immense cash crunch and there was delay in remittance of PF Dues having no mensrea behind the same. Though the commissioner was made aware of the said situation, the same was not considered at all by the commissioner and no finding has been rendered on the mensrea. The other point raised by the

appellant is that the commissioner in the notice had initially proposed for recovery of damage and interest amounting to Rs. 40267712/-. Objection being raised about the deposits already made as per the direction of this tribunal and the anomalies relating to remittance for some period the demand was revised and a revised notice dated 25.09.2019 u/s 14B and 7Q was issued demanding Rs. 1,14,53,374/-. The establishment again pointed out about deposit of Rs. 22,55,472/- determined during the 7A proceeding. He thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delay in remittance, the impugned order is not sustainable under law and the appellant has a strong arguable case in this appeal. Unless the impugned orders levying damage and interest are stayed, serious prejudice would be caused to the appellant. The Ld. Counsel for the appellant also canvassed that the proceeding for damage and interest were initiated pursuant to a common notice and a common proceeding. Though the commissioner tactfully passed two separate orders it is a composite order. He thereby submitted that the said composite order for the lack of consideration of mitigating circumstances and finding on mensrea is illegal and liable to be set aside. Unless the execution of the order would be stayed pending disposal of the appeal, serious prejudice shall be caused to the appellant. To support his argument the learned counsel for the appellant has placed reliance in the case of *Shree ji Cotfab Limited vs. APFC*, decided by the Hon'ble High Court of Rajasthan.

In his reply the learned counsel for the respondent submitted that there being two separate orders passed, those cannot be termed as composite orders and while arguing on the benevolent provisions of EPF& MP Act he submitted against grant of stay on the operation of the impugned orders. He also drew the attention of this Tribunal to the judgment of the Hon'ble SC in the case of **Arcot Textile Mills Ltd vs. RPFC decided in civil appeal no9488/2013** to submit that two separate orders being passed those are not composite orders and appeal challenging the order u/s 7Q is not maintainable. The other limb of his argument is that the plea of financial difficulty taken by the appellant cannot exonerate him of its statutory liabilities.

On hearing the argument advanced by both the counsels and on a careful reading of the judgment of Arcot Textiles referred supra, it is found that the Hon'ble Apex court have clearly observed that when two separate orders are passed, those cannot be treated as composite orders. Furthermore at this stage no opinion can be formed whether common or separate proceedings were held.

There is no doubt on the legal position that an appeal is a creature of the statute and the appeal for it's maintainability must have the clear authority of law. In the case of Arcot

Textiles the Hon'ble SC have also held that right to appeal cannot be assumed to exist unless it is expressly provided by the statute. The provision of sec 7I of the EPF & M P Act since does not provide for appeal against order levying interest, it is not felt proper to pass any interim order of stay against the said order. 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 prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied.

In this case the period of default as seen from the impugned order is from 01/11/2013 to 31.03.2019 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.

Hence in this case it is 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 cannot be unconditional. The appellant is directed to deposit 10% of the assessed amount of damage through challan within four weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after four weeks i.e on 31st August, 2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer

