

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty

m/S. Mumbai International Airports Ltd ... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent

Bandra

Presence:

For the Appellant : Mr.R.D.Joshi, Adv.

For the Respondent : Mr. Ravi Rattesar, Adv.

ORDER

The appeal challenges the orders dt 21/07/2022 passed by the RPFC-Bandra under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs 9,54,759/-and Rs13,38,845/-as damage and interest respectively, for delayed remittance of EPF dues for the period 01/04/2018 to 31/03/2021.

The appeal having been filed within the time prescribed under the Rule, and there being no other defect, is admitted. A petition has been

levying damage and interest are stayed ,serious prejudice would be caused to the appellant.

The appellant also argued that the commissioner has passed a composite order levying damage and interest by conducting a common proceeding. Hence the order passed u/s 7Q of the Act is appealable and need to be stayed till disposal of the appeal. In order to convince this tribunal that the order passed u/s 7Q is also appealable, he pointed out that pursuant to a common notice, joint inquiry proceeding was held to calculate the damage and interest and a common order was passed on 17.10.19 though typed out separately.

The Hon'ble SC in the case of *Arcot Textile Mills Ltd vs RPFC decided in civil appeal no 9488/2013* have held that when two separate orders are passed/s 14B and 7Q of the Act, those are not composite orders and appeal challenging the order u/s 7Q is not maintainable.

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 can not be treated as composite orders.

On hearing the argument advanced by the counsel for the appellant 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.

filed by the appellant praying interim stay on the impugned order pending disposal of the appeal on the grounds stated therein.

Though noticed the respondent did not appear to participate in the hearing on the prayer for interim stay.

The learned counsel for the appellant 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. Furthermore the commissioner has not given any finding on the mensrea of the appellant behind the delay in remittance. Though the commissioner was made aware of the situation that the delay in remittance is attributable to the mismatching of the names of the employees with reference to their Aadhar card and for a technical glitch in operating the concerned Bank account and for different orders passed by the Hon'ble High Court freezing the Bank accounts of the appellant, none of the same was not considered at all by the commissioner. The other point raised by the appellant is that the basis of calculation of damage, though was made available to the appellant, no opportunity was given for verifying the related documents. Moreover the commissioner has not assigned any reason for imposing damage at the maximum percentage. He thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delayed remittance the impugned order is not sustainable in the eye of law and the appellant has a strong arguable case in this appeal. Unless the impugned orders

In this case the period of default as seen from the impugned order is for three years 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 can not be unconditional. The appellant is directed to deposit 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a condition for stay pending disposal of the appeal. It is hereby made clear that there would be no stay on the order passed u/s 7 Q of the Act as no opinion can be formed at this stage if the orders impugned are composite orders or not. Put up after three weeks i.e on 30/11/2022 for compliance of the direction. There would be in interim stay till the next date on execution of the order.

PRESIDING OFFICER
CGIT-1 MUMBAI