

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**MUMBAI**

Present

Smt.Pranita Mohanty

M/s. Spray Tech ...

Appellant

Vs

Assistant Provident Fund Commission er ...

Respondent

Thane

Presence:

For the Appellant : Mr.Sachin D.Rege, Adv.

For the Respondent : Mr. Sunil Surana, Adv.

ORDER

This order deals with the admission of the appeal and an application filed by the appellant praying an interim order of stay on execution of the impugned orders passed u/s 14B and 7Q of the EPF&MP Act , by the APFC Delhi , East. Another prayer has been made for condonation of delay in

filing the appeal though no separate petition has been filed.

Being noticed the Respondent appeared through it's counsel, filed a written objection to the appeal and petition praying interim stay on the execution of the impugned order and the matter was heard being argued by the counsel for both the parties. Before admission of the Appeal the respondent had freezed the Bank account of the appellant and application being moved , this Tribunal by order dt 17/10/2019 had directed the appellant to deposit Rs3,00,000/- as a pre condition for de freezing the bank account which was complied.

The Registry of this Tribunal has pointed out that the appeal has been filed beyond the prescribed period of limitation. But for the explanation offered by the appellant that the illness of the appellant was the reason behind the delay seems convincing for condo nation of delay. The delay is accordingly condoned and there being no other defect the appeal is admitted in respect of the order passed u/s 14B only.

The appeal has been filed by the appellant, a Proprietorship Firm challenging the order

21/02/2019, communicated on 28/02/2019 u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit 8,64,425/- as damage and Rs 4,22,730/- as interest for the delayed remittance of the PF dues for the period 1/04/2012 to 31/03/2017.

It has been stated by the appellant that the commissioner by notice dt 8/1/2018 had called upon the establishment show cause as to why damage shall not be levied and interest shall not be calculated for the delay in remittance of the PF contribution of it's employees for the above said period. In response to the same , the authorized representative of the establishment appeared and disputed the calculation by filing a written submission. It was specifically pleaded before the commissioner that the establishment has made timely remittance of the PF contribution and there is no delay in remittance. Proof of remittance was also produced during the inquiry. But the commissioner did not consider any of the submissions and proceeded to pass the impugned order. Copies of the proof provided during inquiry has also been placed in the appeal file. It is also submitted that a demand was made for a revised calculation which was not considered too. By filing

the challan details showing the deposit , the appellant submitted that there is hardly any delay in remittance, but the commissioner without assigning any reason for imposition of damage at the highest percentage passed the non speaking order. He thereby submitted that the composite order which has been passed after a common inquiry need to be stayed as the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted and an interim order preventing execution of the impugned order pending disposal of the appeal is not passed.

The learned counsel for the respondent in his reply took serious objection to the prayer of interim stay and argued that the delay has been admitted by the establishment. He thus argued that no order of interim stay should be granted which would have the effect of negating the very purpose of the beneficial legislation. He also submitted that there are two separate orders passed u/s 14B and 7Q of the Act and as such the appeal challenging the order u/s 7Q is not maintainable.

In his reply the learned counsel for the appellant while pointing out the defects and discrepancies in

the impugned orders including no finding on the mensrea for delayed remittance entailing liability for damage, submitted that the two separate orders are the out come of a common summon and common proceeding and hence a composite order in respect of which appeal is maintainable.

The position of law in this regard was discussed by the Hon'ble SC in the case of Arcot Textiles Mills case and it was held that the order passed u/s 7Q if a composite order being passed u/s 7A is amenable to appeal u/s 7I of the Act. It was further held that any composite order a facet of which is appealable , the other part would be appealable too. If an independent order is however passed, no appeal would be maintainable in respect of the interest compound under section 7Q of the Act.

The position was again discussed by the Hon'ble High Court of Delhi in the case Gourav Enterprises vs UOI, and it has been held that in order to determine if the order passed u/s 7Q is an independent order or composite order , the facts relevant for consideration are

- 1- if the notice to show cause was common
- 2- if common reply was filed by the establishment

- 3- if common proceedings u/s 14B and 7Q were held
- 4- if two separate orders or a common order was passed.

The Hon'ble court have further held that , if the notice to show cause, reply to the notice and proceedings are common, mere passing of two separate orders on the same date would not render the proceedings under section 14B and 7Q independent of each other. But the order passed in the case of Gourav Enterprises has been stayed by the Hon'ble division bench of the High Court of Delhi. Hence for the separate orders passed u/s 14B and 7Q ,the same can not prima facie be held to be a composite order.

Without delving into the other details as pointed out by the appellant, it is held that the appellant has a strong case to argue in the appeal. Unless the execution of the order impugned in the appeal assessing damage would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay can not be un conditional. Hence the appellant is directed to deposit a nominal amount i.e 30% of the damage assessed within 4 weeks from the date of this

order as a precondition for stay of the impugned orders assessing damage by depositing challan before the EPFO , failing which there would be no stay on the impugned order. Call on 25/11/2022 for compliance of the direction and list the matter for final hearing as the respondent has already filed reply to the appeal.

PRESIDING OFFICER
CGIT-1, MUMBAI