

CGIT-1/EPFA/ 40 OF 2020

06.9.2022

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

Present

Smt.Pranita Mohanty

M/s. Supreme Infrastructure India Ltd ... Appellant

Vs

Assistant Provident Fund Commissioner ... Respondent

Thane

Presence:

For the Appellant : Mr. P.M.Bhagat, Adv.

For the Respondent : Mr. Sunil Surana, Adv

ORDER

This order deals with admission and a separate petitions filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre-condition for filing the appeal, for the reasons stated in the petitions.

Copy of both the appeal and the petition being served on the respondent, learned counsel appeared and participated in the hearing

after filing the written objection to the petition praying waiver of the condition of pre deposit.

Perusal of the office note shows that the impugned order was passed on 3/11/2020 and the appeal was filed on 17/12/2020 i.e within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without identifying the beneficiaries. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. But the commissioner without going through the details passed the order, which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant. The other argument advanced by him is that the notice was initially served on the allegation of non-compliance in respect of 82 employees. The appellant made deposit of the deficit remittance in respect of those 82 employees. Once that was complied the Respondent dug out other defects and passed the impugned order assessing the amount though no effort was made to identify the beneficiaries. Citing the judgment of H P Forest Corporation, he submitted that the order passed by the commissioner is illegal and liable to be set aside. In such a situation, insistence on compliance of the condition of pre deposit will cause undue hardship to the appellant and

the Tribunal in appropriate cases has the power to waive the said pre deposit condition. He also argued that the commissioner made the assessment taking into consideration the payment made to the contractors having separate code no and the expenses booked in the balance sheet. Not only that the commissioner has relied upon the report of the EO only to arrive at the conclusion and all the argument made during the inquiry were rejected. He thereby prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid and the appellant being an established company there is least chance of fleeing out of the reach of law.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. She argued that the commissioner in the impugned order has dealt the issue of non identification of the beneficiaries. The gist of her submission is that the burden of providing the identities of the employees for whom compliance was made by the establishment equally lies with the said establishment. If the documents with regard to the employees are not produced despite direction, the commissioner has to decide the matter on the basis of available records. She thus argued for a direction to the appellant for deposit of 75% of the assessed amount as a pre condition for admission of the appeal.

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In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. She argued that the commissioner in the impugned order has dealt the issue of non identification of the beneficiaries. The gist of her submission is that the burden of providing the identities of the employees for whom compliance was made by the establishment equally lies with the said establishment. If the documents with regard to the employees are not produced despite direction, the commissioner has to decide the matter on the basis of available records. She thus argued for a direction to the appellant for deposit of 75% of the assessed amount as a pre condition for admission of the appeal.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. For the same it need to be considered that the period of default in respect of which inquiry was initiated are from April 2014 to February 2016 and the amount assessed is Rs 93,56,932/- There is no mention in the order about the identification of the beneficiaries or to ascertain if they are in the pay roll of the appellant. Without going to the other detail pointed out by the appellant challenging the order as arbitrary and at this stage of admission without making a roving inquiry on the merits of the appeal, it is felt proper to refer to the judgments of the Hon'ble SC in the case of **Food Corporation Of India VS Provident Fund Commissioner, (1990 SCC, -1-68)**, wherein it has been held that assessment of unpaid EPF dues without identifying the beneficiaries is not sustainable in the eye of law. Keeping the principle in view and taking the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances in to consideration, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar of the Tribunal initially for a period of one year with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal.

The earlier order of interim protection shall continue till the next date when the appellant shall comply the direction given in this order. List the matter on ~~30/11/22~~ for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

PRESIDING OFFICER

CGIT – 1 MUMBAI