

**BEFORE THE 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.

ATA No. D-1/15/2021

M/s Metro Waste Handling Private Limited

Appellant

Vs.

APFC, Delhi North

Respondent

ORDER DATED:-03.05.2021

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

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

Notice being served the Ld. Counsel for the respondent appeared and participated in the hearing. No written objection has been filed by the respondent.

Perusal of the record reveals that the impugned order u/s 7A of the EPF and MP Act was passed by the APFC Delhi North on 03.02.2021 and the appeal has been filed within the prescribe time limit. On behalf of the appellant it was submitted that by order dated 03.02.2021 the commissioner has assessed Rs. 20,56,178/- as the deficit PF contributions payable by the appellant/establishment. While doing so the commissioner solely relied upon the report of the enforcement officer in which it has been stated that the establishment in order to evade deposit of PF dues has intentionally split the basic wages into CCA and conveyance allowance though the same has been paid to the employees uniformly. The enforcement officer had inspected the establishment several times when all necessary cooperation was rendered. After the inspection dated 29.06.2018 for the period February 2018 to May 2018 the EO assessed Rs. 21,128/- towards deficit deposit and the same was complied promptly by the establishment. A notice dated 16.04.2019 was served on the appellant calling him to reply as to why assessment u/s 7A shall not made as per

the fresh report of the EO. The establishment appeared and participated in the enquiry. But the commissioner with a prejudiced mind and without considering the submissions made by the establishment passed the impugned order on 03.02.2021. Holding that the establishment has intentionally bi-furcated the basic wage and DA into allowances though the same is paid universally. Describing the said order of the commissioner as illegal and against the settled principle of law he submitted for admission of the appeal and stay on the execution of the impugned order. He also raised several other points in support of the appeal, including that enforcement officer was never called to depose and thereby the establishment was deprived of cross examining him. It was also submitted that the second inspection report of the EO wherein bifurcation of salary was mentioned, though resisted by the establishment and a reply to that effect was submitted before the commissioner vide annexure-14, during the course of inquiry, the commissioner never consider the same and the inquiry was closed. Not only that the prayer by the establishment for examination of both the Eo's was turned down. Thereby he submitted that the appellants has a strong arguable case and the impugned order if would not be stayed substantial prejudice shall be caused. To support his contention he cited several judgments of the Hon'ble Supreme Court including the case of **APFC vs. MS Nandlal and Company reported in 2017 LLR83** to submit that the assessment u/s 7A of the Act should not be confused with an assessment of tax. He also submitted that the impugned order lacks the identification of the beneficiary which makes the order illegal. In this regard he placed reliance in the case of Himachal Pradesh State forest Corporation vs. RPFCL decided by the Hon'ble Supreme Court in Civil Appeal No. 5717 of 2001.

In reply the Ld. 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 provision of Section 70 by depositing 75% of the assessed amount.

Considering the submissions advanced by the counsel for both the parties and order need to be passed on the compliance/waiver of the conditions laid under provisions of section 70 of the Act. The Hon'ble Supreme Court in many cases have deprecated the action of the commissioner in accepting the report of the EO in toto. Without going to the other details pointed out by the appellants 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 observe that the appellants has a strong arguable case in this appeal. Thus, considering the period of default and the amount assessed it is felt that this tribunal should exercise its discretion vested u/s 70 of the Act. But the circumstances do not justify total waiver of the condition of

the pre deposit. 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 4 weeks from the date of this order towards compliance of the provisions of section 70 of the Act by way of FDR in the name of the Registrar of CGIT with provisions of auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on the execution of the impugned order till disposal of the appeal. List the matter on 05-July-2021 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Sd/-

Presiding Officer