

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-2/03/2021

M/s. Precision Metal Components

Appellant

Vs.

RPFC Gurgaon

Respondent

ORDER DATED:- 12.03.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7-A of EPF &MP Act was passed by the commissioner on 29.09.20, and the appeal was filed on 07.01.21. Thus the office has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of 60 days, it is never intentional but for reasons beyond the control of the appellant and this tribunal can exercise its discretion for extension of the period of limitation in appropriate cases, in view of the order passed by the Hon'ble SC in suomoto WP(civil) No 3/2020. Citing the shut down of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for the delay in receipt of the impugned order. By filing the tracking report obtained from the portal of Indian

Post, he submitted that the impugned order was passed on 20.9.20 and it was received on 20.10.20. at that time all activities were in a halt due to the out break of COVID - 19. considering the circumstances the Hon'ble SC have directed for condonation of delay until further order. Soon after the condition improved the appeal was filed .he thereby pleaded that the delay may be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble SC for condonation of delay. But he submitted that when the impugned order was passed the Tribunal had already allowed e-filing. The explanation offered by the appellant is not worthy of acceptance. The Hon'ble S C in their order dated 8th March 2021 passed in suomoto WPC No 3/2020 have issued direction for excluding the period between 15.3.20 to 14.3.21 for computing the period of limitation in suits and appeals. Hence taking all these aspects into consideration, it is held that the delay is not intentional but for a reason beyond the control of the appellant. The impugned order was passed by the commissioner on 29.9.20 and it was received by the appellant on 29.10.20. The appeal with all probability should have been filed on or before 29.12.20. But the appellant establishment filed the appeal on 7.1.21. Hence it is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. The petition for condonation of delay is accordingly allowed.

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 by the commissioner without considering the submission made and solely basing on the report of the E O.. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also

submitted that authorized representative of the establishment as directed produced all the records before the E O, who after perusing the same prepared a report and produced the same before the commissioner on 11.9.20. on the same day the commissioner without giving opportunity to the establishment of confronting the report of the E O, concluded the inquiry. Not only that the commissioner while passing the order had never made any effort of identifying the beneficiaries. In fact the persons held to be the employees of the establishment are the employees of the contractor with whom the establishment had employer to employer relation. 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 during this difficult time .He there by prayed for waiver of the condition of pre deposit canvassing that the Tribunal has the discretion to do so in the facts and circumstances of this case.

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.

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. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it is to be considered that the Hon'ble S C in several cases have deprecated the action of the commissioner in accepting the report of the E O in toto. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A

alleging that the appellant establishment has intentionally omitted remittance for the eligible employees

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 observe that the appellant has a strong arguable case in this appeal. Hence considering the period of default, the amount assessed and the prevailing circumstances 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 4,25,000/- which is little more than 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 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. List the matter on for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly. List

the matter on 29/04/2021 for compliance - supporting '21'

Presiding Officer