

**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-2/06/2021

M/s.UPSRTC, Noida Region

Appellant

vs.

RPFC, Noida

Respondent

ORDER DATED:- 07.04.2021

Present:- Ms. Garima Prashad, Ld. Counsel for the Appellant.

Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the 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 of appeal, for the reasons stated in the petition.

Copy of the petition being served on the respondent the Ld. Counsel Shri S.N. Mahanta appeared and participated in the hearing without filing any written objection to the application u/s 7O of the Act.

Perusal of the office note reveals that the impugned order was passed on 16.12.2020 by the RPFC Noida assessing 94,67809/- u/s 7A and the appeal has been filed on 05.02.2021 i.e. within the time limit prescribed under the Rule.

The grievance of the appellant is that it is a corporation engaged in public transport business under the direct control of the government of Haryana due to shortage of manpower the corporation has been employing driver and conductors on contract basis who are being paid on the basis of mileage covered by them per month. As per the resolution of the board of the corporation, the contractual drivers and conductors are being paid Rs.0.30Paisa as basic wage and Rs.0.70 paisa as bonus per kilometer travelled in a month upto the maximum of 2500 kilometers. The drivers plying the vehicle more than 2501 kilometer in a month is paid at the rate of 30paisa per kilometer as basic wage and Rs. 1.20 per kilometer towards incentives/bonus. This decision was approved by the board as a policy and circulars were issued from time to time. The PF contribution being payable at the rate of 10% of the basic wage, the appellant employer was diligently depositing the same towards the employer shares and the employees

share deducting from the salary. The commissioner initiated an inquiry for the period 11/2006 to 02/2011 alleging that the appellant is not deducting the statutory contribution of the contractual employees in respect of their full wage and avoided the same on the pretext of incentives and bonus paid to them. On receipt of the notice of the inquiry the representative of the appellant appeared and rendered necessary assistance. All the relevant documents were also placed on record. But the RPFC took a wrong and misconceived view in calculating the salary on which EPF dues were payable. The entire determination being illegal is liable to be set aside. He thus, argued for setting aside of the impugned order. In alternative the prayer was made for admission of the appeal waiving the condition of pre deposit contemplated u/s 70 of the Act. Reliance was placed in the case of APFC vs. M/s Nandlal decided by the Hon'ble High Court of Patna to submit that the commissioner cannot pass the order on the basis of mathematical calculation as if tax is assessed which is based upon the report of the EO only. He thereby submitted that the impugned order which suffers from patent illegality need to be stayed as the appellant has a fair chance of success in the appeal. He also submitted that insistence for the deposit in compliance of the provision of section 70 of the Act will cause undue hardship to the appellant. He also pointed out that most of the contractual employees were engaged for a term of 11 months. Few of them are continuing and most of them have left and their whereabouts are not known. There were periodical inspection of the establishment and at no point of time objection was raised by the department pointing out less remittance. With all the submissions he argued for total waiver of the pre condition and admission of the appeal.

In reply the Ld. Counsel of the respondent while supporting the impugned order pointed out the very purpose of the beneficial legislation. He also submitted that during the 7A inquiry the representative of the establishment had admitted their liability. He also pointed out that this is a typical case where the employer has intentionally bifurcated the basic wage into incentives with the intention of avoiding PF contribution towards the employer share. By placing reliance in the case of M/s **JBM Auto system Pvt. Ltd. vs. RPFC** decided by the Hon'ble High Court of Madras he submitted that the tribunal cannot grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

As seen from the impugned order the commissioner in this case has solely relied upon the report of the DR and concluded that there is no substance in the justification given by the establishment placing reliance in the case of RPFC vs. Vivekanand Vidhya Mandir decided by the Hon'ble Supreme Court that the incentive being universally paid is a part of the basic wage on which PF contribution is required to be made. Without prejudging the matter

at this stage and considering the submissions advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid u/s 70 of the Act. At the same time it need to be considered that the alleged period of default in respect of which inquiry was initiated spans from 11/2006 to 02/2011 and the amount assessed is 9467809/-.In the case of Banaras Valves Limited and Others vs. Commissioner of Central Excise the Hon'ble Supreme Court **It has been held that if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.** Moreover the appellant herein is a government corporation having least chance of running away from the reach of law. At the end of the hearing of the appeal if the amount assessed is found payable it will be paid. Furthermore, the commissioner in this case made the assessment as if tax without paying least consideration to the submissions by the establishment. Thus, considering all these aspects and having regard to the principles decided in the case of **Moriroku Ut India Pvt. Ltd vs. Union Of India reported in 2005SCCpage1** and in the case of **Escorts Limited and another vs. Union Of India reported in 43(1991)DLT 207** wherein it has been held that the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it, It is felt that insistence for deposit of 75% of the assessed amount shall cause undue hardship to the appellant. But the circumstances do not justify total waiver of the condition of pre deposit. Accordingly it is held and ordered that the ends of justice would be made 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 FDR in the name of Registrar CGIT 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 05.05.2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-

Presiding Officer

07.04.2021