

**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-1/67/2019**

M/s Vertika Industries

Appellant

Vs.

APFC, Delhi(e)

Respondent

**ORDER DATED:- 07.04.2021**

Present:- Shri Puneet Saini, 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 for waiver/reduction of the condition of pre-deposit contemplated u/s 7-O of the EPF and MP Act.

The appeal has been filed challenging the order dated 09.04.2019 passed u/s 7A of the EPF and MP Act by APFC Delhi by which the appellant/establishment has been directed to remit PF dues of its employees amounting to Rs. 2,15,465/- for the period 10/2014 to 10/2015.

Being noticed the respondent appeared through its counsel and participated in the hearing on admission and consideration of an application filed u/s 7O of the Act by filing a written objection to be same.

On behalf of the appellant it has been stated that the commissioner by notice dated 10.11.2015 initiated inquiry u/s 7A of the Act and the authorized representative of the establishment attended and participated in the said inquiry on several dates. It was alleged that the establishment covered under the Act defaulted in payments for a pretty long period i.e. from 10/2014 to 10/2015. The establishment produced all the documents before the EO which included the attendance, salary and wage registers, bill vouchers, and book of accounts. Though it was pleaded that the establishment had never employed 20 or more persons or applied for the EPF code No. and the EPF code was applied by an outsider furnishing a false list of employees who were never employed by the establishment, and the

appellant is no way responsible for deposit of Pf contribution of those employees, the commissioner did not consider the submissions nor perused the documents filed. The order challenged in this appeal is not based upon any reasoning but solely based upon the report of the EO. The order so passed is patently illegal and the appellant has a strong case to argue with a fair chance of success. If the impugned order would not be stayed, serious prejudice shall be caused.

The Ld. Counsel Mr. Mahanta representing the respondent in his written objection has stated that the EPF and MP Act is benevolent legislation and the statute confers a right to appeal subject to the condition that the appellant shall deposit 75% of the assessed amount for admission of the appeal as a pre condition. The tribunal on exceptional circumstances can waive or reduce the said condition for pre-deposit. He also submitted that the appellant is at liberty of taking the plea of non application of the statute to its establishment at the time of hearing of the appeal on merit. The same cannot be considered at this stage of admission which would amount to pre judging of the matter.

The Ld. Counsel for the appellant forcefully argued that it is a small establishment engaged in the business of structures steel fabrication with total no. of employees varying from 9-12. It has never applied for the code No. under EPF Act though ESI code was applied and allotted from Noida. By unknown persons the application for allotment of code with wrong telephone no. and email-id was submitted and an unilateral decision was taken bringing the appellant under the fold of EPF code though it is not an eligible establishment. A police complaint to that effect has been filed.

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 needs to be considered that the period of default in respect of which inquiry was initiated was from 10/2014 to 10/2015. The amount assessed is Rs. 2,15,465/-. There is no mention in the order about the basis of the calculation arrived at and identification of the beneficiaries. Without going to the other details 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 pass an order keeping in view the principle decided in the case of M/S Banars Valves Ltd. & Others vs. Commissioner of Central Excise, decided by the Hon'ble Supreme Court wherein 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.”** Besides that, considering the grounds of the appeal, the

period of default ,the amount assessed and the prevailing circumstances into consideration an order need to be passed on the petition filed u/s 7O of the Act. The Hon'ble High Court of Bombay in the case of **MorirokuUt 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 have held that** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it. The Hon'ble Apex Court in the case of Banaras Valves referred supra have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter has not pleaded or shown any material to presume undue hardship except the plea that the commercial activities of the establishment has been slowed down.

Thus considering the submission of the parties, 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 20%. Accordingly ,the appellant is directed to deposit 20% of the assessed amount within 3 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 orders till disposal of the appeal. List the matter on 05-May- 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