BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

APPEAL NO. CGIT- 2 / EPFA 05/2024

M/s. Davi Engineering Pvt. Ltd. - Appellant

V/s.

The Assistant Provident Fund Commissioner

EPFO, Pune. - Respondent

ORDER

(Delivered on 03-03-2025)

M/s. Davi Engineering Pvt. Ltd./appellant-applicant has challenged the legality of order dated 12.09.2023, passed u/s. 14-B & 7-Q of the EPF & MP Act 1952, (for-short “the said Act”) and by this application, the applicant prays for stay to the effect and operation of the order under appeal during pendency of lis.

According to the applicant, its establishment is an industry of developing engineering product, plant and machinery and covered under the EPF Act w.e.f. 01.11.2008. He was served with the combined summons dated 31.12.2022 u/s. 14-B & 7-Q of the EPF Act for Damages and Interest for the period from February 2016 to December 2022 for delayed remittance of P.F. dues and after enquiry passed the order dated 12.09.2023. The applicant added that, during that period the whole nation was under Lock-down, there were no business activities and assessment made by the opponent is in violation of circular dated 15.05.2020. The applicant further added that, the company had face financial cash flow crises and due to that it was impossible to pay wages to the employees and all statutory dues were delayed due to the circumstances beyond control. The delay in remittance was not intentional nor deliberate and while passing the order under appeal, mitigating circumstances were not considered as such the order under appeal is illegal.

The opponent resisted the application by reply. The opponent contended that, the applicant was absent in the enquiry, however submitted letter dated 25.08.2023 and requesting to waive the total amount of damages and interest due to financial hardship. The applicant is habitual in making belated remittance and financial difficulty is not suitable ground for waiver of damages. The opponent further contended that, the order under appeal has been passed by following all procedures and considered all submissions based on record, as such the applicant is not entitled for unconditional stay without depositing 50% assessed amount and prayed for rejection of the application.

I have heard Mr. Chheda representative for the applicant and Mrs. Sawant advocate for the opponent.

Though, the applicant has challenged both the orders under appeal as composite order, however the counsel for the opponent pointed out that, the applicant has not deposited the amount of interest assessed in the order u/s. 7-Q of the EPF Act, against which appeal is not maintainable. In such circumstances, the applicant is certainly required to deposit the amount assessed in the order u/s. 7-Q of the EPF Act.

On careful perusal of the copy of the order under appeal, it reveals that, by summons dated 30.12.2022, the applicant was asked to remain present in the enquiry on 23.02.2023, however none appeared on behalf of the applicant on that date and though there is mention in the order under appeal that, the hearing was conducted from time to time, however there is no mention about the dates on which the enquiry was kept subsequently. It goes to show that, only on the basis of letter dated 25.08.2023, the enquiry was concluded for orders. In short only on the absence of the applicant on 23.02.2023, the enquiry was closed.

It is worthwhile to mention here that, the orders, under appeal are for the period from February 2016 to December 2022 and though it is contended that, it was the Covid period and due to that, there was Lock-down and this aspect was not considered by the Authority while passing the order, however some of the period is certainly a Covid period and due to that, there was a Lock-down in India and it seems that, the aspect was not considered by the Authority while passing the order.

It is contended on behalf of the applicant that, by letter dated 25.08.2023, it was informed about the financial hardship and due to that, there was belated remittance of contribution and the remittance was not intentional nor deliberate whereas it is contended on behalf of the opponent that, financial difficulty cannot be the reason for delay remittance of contribution, however more particularly aspect of amendment to the provisions of Sec.14-B of the EPF Act, it needs to be considered exhaustively while deciding the appeal on merit.

In such circumstances, it can be safely said that there are arguable points on merit as such the applicant has made out a prima-facie case, considering the other facts and circumstances of the case, in my opinion the balance of convenience lies in favour of the applicant and considering the comparative hardship, the applicant is entitled for stay to the effect and operation of the order under appeal.

The counsel for the opponent strongly contended that, even in an appeal against the damages u/s. 14-B of the EPF Act, it is obligatory on the part of the applicant to deposit 75% amount as required u/s. 7-O of the EPF Act and for that she put her reliance on the decision of Kerala High Court in **M/s. Chempaka Kindergarten Sthuthi v/s. APFC reported in 2015 SCC Online Kerala Page No. 13454.**

As regards the waiver, I must say that, in case of appeal u/s. 14-B of the EPF Act, the provisions of Sec. 7-O are not applicable and it is applicable only in appeal u/s. 7-O of the said Act

I have carefully gone through the decision relied on behalf of the opponent, in the matter before Lordship it has been appreciated that, considering the above circumstances it is directed that, the demand with respect to Section 14-B of the EPF & MP Act shall be kept in abeyance till the interim application in appeal or the appeal itself considered whichever is earlier however the stay demand shall be applicable only on the petitioner satisfied 30% of amount demanded as per the EPF & MP Act.

In such circumstances considering the request of stay to the order under appeal, I am directing the applicant to deposit the amount of interest assessed in the order u/s. 7-Q of the EPF Act and also the 20% of the amount assessed towards damages as per the order under appeal within a period of eight weeks from the date of this order.

In the result, the application is allowed. The opponent is directed to stay the effect and operation of the order under appeal only on depositing the amount of interest as assessed in the order u/s. 7-Q of the EPF Act and also on depositing 20% of amount assessed in the order u/s. 14-B of the EPF Act towards damages within a period of eight weeks from the date of this order.

Sd/-

Date: 03-03-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai