

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/15/2020

M/s. Aristo Motors Pvt. Ltd.

Appellant

Through:- Shri S.K. Gupta, Ld. Counsel for the Appellant.

Vs.

RPFC Gurugram (East)

Respondent

Through:- Shri Satpal Singh, Ld. Counsel for the Respondent.

ORDER DATED 25.09.2020

The appeal challenges the orders dated 23.01.2020 passed by the RPFC, Gurgaon, under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs 2,74,779 and Rs1,39,284 as damage and interest respectively, for delayed remittance of EPF dues for the period 4/2014 TO 11/2017.

Two separate petitions have been filed by the appellant praying condonation of delay for admission of the appeal and interim stay on the impugned order pending disposal of the appeal for the grounds taken in the petitions.

Being noticed the respondent entered appearance and learned counsel Shri Satpal Singh

representing the respondent participated in the hearing on admission, condonation of delay and interim stay, as has been prayed by the appellant.

The learned counsel for the appellant Shri S.K. Gupta mainly canvassed two points for challenging the impugned order i.e. the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner, who proceeded to pass a nonspeaking order mechanically. Furthermore during the preceding years of the period under inquiry, the appellant had to undergo acute financial hardship and company went into immense cash crunch and there was delay in remittance of PF Dues having no mensrea behind the same. Though the commissioner was made aware of the said situation, the same was not considered at all by the commissioner. The other point raised by the appellant is that the basis of calculation of damage was not made available to the appellant nor the commissioner has assigned any reason for imposing 100% damage. He

thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delayed remittance the impugned order is not sustainable under law and the appellant has a strong arguable case in this appeal. Unless the impugned orders levying damage and interest are stayed, serious prejudice would be caused to the appellant. With regard to delay in filing the appeal it has been stated that the impugned orders were passed on 23.1.2020 and the same was not communicated to the establishment. The appellant came to know about the same when recovery proceeding was initiated. The appellant also submitted that the period of limitation if would be computed from the date of order or date of dispatch, the time available to the appellant was upto 23.3.2020. Before the appeal could be filed the country went into lock down due to the pandemic COVID-19. Being aware of the situation the Hon'ble Supreme Court by order dt23.03.2020 passed in suomoto WP No 3/2020 have extended the period of limitation until further order and that WP is pending. Hence the appellant has prayed for condonation of delay.

On behalf the respondent the learned counsel fairly conceded to the submission of the appellant with regard to the order of the Apex court extending the period of limitation. However he argued that the appellant has not taken the plea of covid condition preventing it from filing the appeal within the prescribed time limit. But the said submission of the respondent is not accepted for the prevailing difficult condition and the direction of the Hon'ble Supreme Court to have a liberal approach in condoning the delay. There being no other defect pointed by the registry, the delay in filing the appeal is hereby condoned and the same is admitted.

On behalf of the appellant it was argued that the commissioner has passed a composite order levying damage and interest. Hence the order passed u/s 7Q of the act is appealable and need to be stayed till disposal of the appeal. In order to convince this tribunal that the order passed u/s 7Q is also appealable, he pointed out that pursuant to a common notice, joint inquiry proceeding was held to calculate the damage and interest. But to deprive the appellant of its right to challenge the composite order, two separate orders for damage and interest have been passed. To support his argument the learned counsel for the appellant has placed reliance in the case of Shreeji Cotfab Limited vs APFC, decided by the Hon'ble High Court of Rajasthan.

In his reply the learned counsel for the respondent submitted that there being two separate orders passed, those cannot be termed as composite orders and while arguing on the benevolent provisions of EPF&M

P Act he submitted against grant of stay on the operation of the impugned orders. He also drew the attention of this Tribunal to the judgment of the Hon'ble Supreme Court in the case of Arcot Textile Mills Ltd vs RPFC decided in civil appeal no9488/2013 to submit that two separate orders being passed those are not composite orders and appeal challenging the order u/s 7Q is not maintainable.

On hearing the argument advanced by both the counsels and on a careful reading of the judgment of Arcot Textiles referred supra, it is found that the Hon'ble Apex court have clearly observed that when two separate orders are passed, those cannot be treated as composite orders. Furthermore at this stage no opinion can be formed whether a common or separate proceedings were held.

There is no doubt on the legal position that an appeal is a creature of the statute and the appeal for it's maintainability must have the clear authority of law. In the case of Arcot Textiles the Hon'ble Supreme Court have also held that right to appeal cannot be assumed to exist unless it is expressly provided by the statute. The provision of sec 7I of the EPF& M P Act since does not provide for appeal against order levying interest, it is not felt proper to pass any interim order of stay against the said order. On hearing the argument advanced by the counsel for both the parties an order need to be passed on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied.

In this case the period of default as seen from the impugned order is from 4/2014 to 11/2017 and the amount of damage assessed is equally big. Thus on hearing the argument advanced,, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of **MulchandYadav and Another vs Raja BulandSugar Company and another reported in(1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit Rs 55,000/ which is close to 20% of the assessed amount of damage by way of Challan to be deposited with the Respondent within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear

that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e. on 20-October-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer