BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

D-1/19/2024

M/s Rays Power Experts Pvt. Ltd. vs. APFC/RPFC, Delhi Central.

Present: Sh. Prakash Kumar, Ld. Counsel for the Appellant.
Sh. Rahul Kumar Verma & Ms. Savita Sharma, A/R for the Respondent.

<u>Order Dated-01.08.2025</u>

1. Ld. Counsel for the appellant pressed his application **under Rule 7(2) of the Tribunal (Procedure) Rules, 1997 (hereinafter referred as the Rules)** as well as **application u/s 7O of the EPF & MP Act, 1952 (hereinafter referred as the Act).**

2. Record perused. This appeal has been filed as per office record on the 91^{st} day from the issuance of the order. Days have been counted from 10.01.2024 when the order u/s 7A of the Act was passed. However, it is also a matter of fact that the appellant has also filed the review application, it was dismissed vide order dated 14.02.2024 and received the same to the appellant on 11.03.2024.

3. Ld. Counsel for the respondent stated that the order dated 14.02.2024 passed u/s 7B of the Act was dispatched on the same day through email and it was sent by post on 21.02.2024. Assuming that order was dispatched on 14.02.2024 and received to the appellant on 24.02.2024, then also the appeal is found within the limitation because it was within the period of sixty days as prescribed under the rules. Therefore, there is no need to deal with the application for condonation of delay as the appeal is found to be filed within limitation, accordingly the application stands allowed.

4. So far so application u/s 7O of the Act is concerned, the respondent has already recovered the amount of Rs.20,04,000/- i.e., about 97% of the assessed amount within the limitation of filing the appeal. In this respect **provision of 7O of the Act** along with **provision of Section 7 of the Rules** are required to be reproduced herein:-

7-O. Deposit of amount due, on filing appeal.—<u>No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five percent of the amount due from him as determined by an officer referred to in section 7A</u>:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

Rule 7 Fee, time for filing appeal, deposit of amount due on filing appeal.—

(1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

(2) Any person aggrieved by a notification issued by the Central Government <u>or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.</u>

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period<u>, extend the said period by a further period of 60 days.</u>

Provided further that <u>no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing</u>

<u>75% of the amount due from him as determined under Section 7-A.</u>

<u>Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O</u>

5. From the above said provision it is made quite clear that the establishment preferred the appeal again the order within sixty days of issuance of order. Later on, the Supreme Court has clarified in the matter of **D. Saibaba Vs Bar Council of India & Anr (2003)6 SCC 186**, that for the purpose of calculating the period for limitation, it is to be counted from the date of knowledge of the order not from the issuance of the order.

6. The tribunal has come across the fact that the establishment has been put in dark about passing of any order. Though, the appellant has not raised this point, yet, this tribunal has taken the notice of the fact that the respondent department, in a haste manner, recovered the said amount of Rs.20,04,000/- which is against the law. If the department is permitted to withdraw or attach the account within sixty days in spite of pending of the application under section 7B of the Act in the garb of the argument that it is entitled to recover the amount from the date of passing of the order u/s 7A of the Act, then availability of the review as prescribed under section 7B of the Act has no meaning.

7. By taking almost all of the amount as assessed u/s 7A of the Act, department has snatched the discretion of this tribunal for deciding the application u/s 7O of the Act, hence, department is directed to refund the entire amount recovered to the bank account of the appellant within a week. Thereafter, this matter shall be listed on 11.08.2025 for arguments on the misc. application filed u/s 7O of the Act.

Sd/-

(Atul Kumar Garg)

Presiding Officer