CGIT-1/EPFA/22 OF 2022

09.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty
Presiding Officer

M/s. Navalbhau Pratisthan College of Education. ... Appellant
Vs

Assistant Provident Fund Commissioner ... Respondent
Nashik

Presence:

For the Appellant : Mr. H.L.Chheda,
Authorized representative

For the Respondent : Absent.

ORDER

This order is for admission of the appeal and consideration of the application file for condonation of delay and interim protection against the execution of the impugned order.

Matter was heard being argued by the appellant. None appeared on b half of the respondent inspite of due service of the notice.

The order passed by the RPFC, Nashik has been challenged wherein the appellant has been directed to deposit 5,18,539 as damage and Rs.250076/-

,s interest for delayed remittance of the PF dues of its employees for the period 1.4.2015 to 30.9.2019.

The impugned order was passed on 7.9.2021 and the appeal has been filed on 28.2.2022. Thus, the registry has reported about the delay in filing the appeal. It is true that the appeal has been filed beyond the prescribed period of limitation but the Hon'ble SC in suo moto WPC No. 3 of 2020 have extended the period of limitation for a further period of 90 days from 28.2.2022. In view of the said extension granted by the Hon'ble SC for the post covid period it is held that the delay should be condoned.

Accordingly, the delay is condoned. There being no other defect the appeal is admitted. The appellant has stated that it is an educational institution and struggling for the cash flow on account of less student intakes since some years. The Commissioner issued a notice for enquiry alleging delay in remittance of EPF dues. The Principal of the Institute by a letter correspondence intimated the Commissioner that for the period March 2015 to Nov 2016 all the contributions were deposited in time. Subsequent there to other correspondence were also made but the Commissioner without considering any of the submissions made and in a technical manner by relying upon the report of the E.O. only passed the impugned order. He described the orders under section 14-B and 7-Q as composite order since a common proceeding was held. He further submitted that the respondent was served notice soon after the appeal was filed. But the said respondent in utter disregard of law and having knowledge that the appeal is pending for admission have take action under section 8-F of the EPF&MP Act and warrant of arrest has been issued. The appellant has thus stated that the appeal be admitted and an interim protection be granted till disposal of the appeal.

On perusal of the record, it appears that the Commissioner while assessing the damage has not assigned any reason for imposing the damage at the highest ate. It is a cryptic order and no finding has been rendered on the mens Rea of the establishment. The mitigating circumstances pointed out in the correspondence made by the Principal of the Institute was never considered. All these circumstances makes out a strong prima facie case in favour of the appellant for grant of stay. But it is observed that the stay cannot be unconditional. Hence, the appellant is directed to deposit 15% of the assessed damage by way of challan as a pre-condition for grant of stay. No order is passed with regard to the calculation of interest made u/s 7-Q of the Act since two separate orders have been passed by the Commissioner and at this stage no opinion can be formed as to the compositeness of the order.

The appellant is directed to make the deposit as directed above within 4 weeks time failing which there would be no stay on the execution of the impugned order. The respondent is directed not to take any coercive action against the appellant till the next date fixed for compliance.

Fix on 14/12/22

[redacted]

PRESIDING OFFICER

CGIT-1 MUMBAI