CGIT-1/EPFA/32 OF 2022

09.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty

M/s. Ravi Development ... Appellant

Vs

Regional Provident Fund Commissioner - II ... Respondent
Kandivali

Presence:

For the Appellant :

For the Respondent :

ORDER

This order deals with admission of the appeal and a separate petitions filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of both the appeal and the petition being served on the respondent, learned counsel appeared and participated in the hearing and raised objection to the petition praying waiver of the condition of pre deposit.

Perusal of the office note shows that the impugned order was passed on 10/02/2022 and the appeal has been filed on 28/04/2022. And the date of receipt of the order is 04/03/2022.hence it is held to have been filed within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without identifying the beneficiaries in clear violation of different judicial pronouncements made by the Hon'ble S and the Hon'ble HCs. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. But the commissioner without going through the details passed the order, which is based upon the report of the E O and expenditure booked under different heads in the balance sheet only. Citing various judgments of the Hon'ble S C he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant. The other argument advanced by him is that the assessment has been made in respect of huge amount shown in the balance sheet as project cost, house keeping and security charges. Though it was pointed out during inquiry that the security personnel are hired through contractors having independent code no and details of the contractors were furnished, the same was not considered at all. On the last day of hearing the establishment had requested for time which was not allowed and the inquiry was hurriedly closed on the pretext that the Head Office has instructed for closure of all five year old matters. It is also pointed out that the EO submitted his report on 4/2/2022 and on the same day the inquiry was closed. The report of the EO was not supplied nor chance of rebutting the same was allowed to the appellant. Citing the judgment of H P Forest Corporation, he submitted that the order passed by the commissioner is illegal and liable to be set aside. In such a situation , insistence on compliance of the condition of pre deposit will cause undue hardship to the appellant and the Tribunal in appropriate cases has the power to waive the said pre deposit condition. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid and the appellant being an established company there is least chance of fleeing out of the reach of law..

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He argued that the commissioner in the impugned order has dealt the issue of non identification of the beneficiaries. The gist of his submission is that the burden of providing the identities of the employees for whom compliance was made by the establishment equally lies with the said establishment. If the documents with regard to the employees are not produced despite direction, the commissioner has to decide the matter on the basis of available records. He thus argued for a direction to the appellant for deposit of 75% of the assessed amount as a pre condition for admission of the appeal.

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 need to be considered that the period of default in respect of which inquiry was initiated are from10/2015 to 08/2016. It is a very brief period and less than one year. But the amount assessed is Rs 6.98,95,351/-There is no mention in the order about the identification of the beneficiaries or if they are in the pay roll of the appellant. Without going to the other detail 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 refer to the judgments of the Hon'ble SC in the case of **Food Corporation Of India VS Provident Fund Commissioner,(1990 SCC,-1-68),** wherein it has been held that assessment of unpaid EPF dues without identifying the beneficiaries is not sustainable in the eye of law. Keeping the principle in view and taking the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration, 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 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 6 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 initially for a period of one year 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 order till disposal of the appeal. The Respondent is directed not to take any coercive action for recovery in respect of the impugned order till the next date when the appellant shall comply the direction given in this order. List the matter on-13|12|22------ for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

PRESIDING OFFICER

CGIT-1 MUMBAI