CGIT-1/EPFA/34 OF 2022

09.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty

M/s. Tag Eco Recycling India Pvt. Ltd ... Appellant

Vs

Assistant Provident Fund Commissioner ... Respondent
Bandra

Presence:

For the Appellant : Mr. Sachin Rege, Adv.

For the Respondent : Mr.Ravi Rattesar, Adv.

ORDER

This order deals with the admission of the appeal, and two separate petitions filed by the appellant praying interim stay on execution of the impugned order and 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, and condo nation of delay for the reasons stated in the petitions.

Copy being served, the learned counsel for the Respondent appeared and participated in the hearing though no written objection to the petition filed u/s 7O of the Act. Has been filed. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the APFC Bandra on 30/03/2021, and the appeal has been filed on 27/05/2022. Thus, the Registry has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of limitation, it is not intentional but for reasons beyond the control of the appellant and more over it is within the period up to which this tribunal can exercise it's discretion for extension of the period of limitation in appropriate cases as has been directed by the Hon'ble SC. He also pointed out that in view of the order passed by the Hon'ble S C in suo moto WP (civil) No 3/2020. granting a further relaxation of 90 days from 28th February 2022, on account of impact of covid 19, the Tribunal has power to condone the delay.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble SC for condonation of delay. But he submitted that when the impugned order was passed the Tribunal had already started functioning physically. Thus the explanation offered by the appellant is not worthy of acceptance. He also submitted that from the impugned order it is evident that the establishment was participating in the 7A proceeding through out. In such a situation the explanation offered can not be accepted. But as seen from the record the appeal was filed within the time allowed by the Hon'ble SC for the impact during the post covid period. Hence the objection with regard to the delay is not accepted. The delay is hereby condoned.

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 by the commissioner without considering the submission made and solely basing on the report of the E O. Being called by the commissioner though all the available documents were produced and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also submitted that the appellant establishment is a Pvt Ltd Company and deling with trading of Metals. For the stiff competition faced in the domestic market, the company suffered huge loss and decided to close down the business. For that reason it downsized it's no of employees and the trading activities were closed during the financial year 2014-15. Thus it had no employees from 01/07/2014. The commissioner issued a notice for inquiry u/s 7A of the Act for non remittance of the PF dues of the employees July 2014 to June 2016 and the AR for the appellant establishment appeared and produced all the documents for the relevant period of inquiry . He also urged that for the said period there being not a single employee engaged by the appellant establishment, the proposed assessment is incorrect. The balance sheet for 2014-15 and 2015-16 were produced. It was also pointed out during the inquiry that after the decision to close the business the establishment had engaged few persons through contractor having separate PF code No and details of the same were produced during inquiry. But surprisingly the commissioner on the basis of the salary ledger booked an imaginary amount as liability without identifying the beneficiaries. Not only that the commissioner also determined 25.16% of the other expenses shown in the balance sheet to asses the PF liability on wages paid to the employees. He also took a wrong view that the records were not produced during inquiry though all the records including the evidence showing engagement of some employees through contractors having separate PF code no were produced. The commissioner without examining the said documents passed the impugned order. There by the appellant submitted that the order challenged in this appeal suffers from patent illegality and liable to be set aside after hearing of the appeal. At present the company is not functioning and any direction for compliance of the provisions of sec 7O would cause undue hardship.

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. His further submission is that the argument advanced on the merit of the appeal can not be considered now as the Respondent has not filed the reply to the appeal. In his reply to the 7O application, he has stated that the establishment had attempted to avoid the PF deposit as required under law by showing the gross wage in balance sheet under the head other expenses. He also argued that no convincing circumstances have been set out for total waiver of the condition of pre deposit.

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. There is no dispute on the facts that the commissioner had made the inquiry on the basis of the report received from the EO. The basis of the calculation is the report of the EO only where in the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance for the employee and there is no uniformity in the allowances paid. But surprisingly the commissioner did not consider the documents produced by the establishment. The scrutiny sheet of the EO placed on record supports the fact that the documents were produced by the establishment during inquiry.

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 observe that the appellant has a strong arguable case in this appeal. Hence considering the period of default, the amount assessed and the prevailing circumstances including the fact that the appellant establishment has closed it's business, it is felt that the circumstances do not justify deposit of 75% of the assessed amount or 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 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. List the matter on

...13/12/22.......for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly. Respondent is directed not to initiate any recovery action against the appellant establishment till next date fixed for compliance of the direction.

[redacted]

PRESIDING OFFICER

CGIT-1, MUMBAI