CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1
MUMBAI

Present

Justice Ravindra Nath Kakkar

CGIT-1/EPFA/15 OF 2021

M/s Ashirwad Enterprises ... Appellant

Vs.

Assistant Provident Fund Commissioner ...Respondent

Thane

Presence:

For the Appellant	:	Mr.H.L.Chheda (A.R)
For the Respondent	:	Mr. Ravi Rattessar, Adv.

Mumbai, dated 13th August 2021.

Order on Miscellaneous Application 15(w)&15(s)

1. The present appeal is filed u/s 7(i) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act') against the order dated 09-11-2020 passed by Assistant Provident Fund Commissioner – Thane u/s 7-A of the Act.
2. Along with this appeal, Appellant has filed application for waiver of deposit under proviso to section 7-O of the Act and also stay on the impugned order.
3. The impugned order was passed by the Respondent on 09-11-2020 and appeal was filed on 28-01-2021. The miscellaneous application for delay in filing this appeal has been allowed and delay was condoned by the separate order.

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4. Today, the matter is fixed for disposal of the miscellaneous waiver/reduction application u/s 7-O of the Act and another miscellaneous application for the stay of the impugned order.
5. Reply/say on the waiver application and stay application has been filed by the Respondent.
6. Heard both the parties at length.
7. Authorized representative of the Appellant stated that the Respondent Commissioner passed the impugned order without summoning the contractors to the Appellant in spite of the request made by the Appellant. The Respondent had passed an order preponing the date of coverage and also assessed the dues prior to the date of preponed coverage. Further stated that there was no mention of the number of employees employed by the Appellant against the preponed date of coverage.
8. It is the case of the Appellant that the Provident Fund Commissioner passed the order considering the balance sheet amount and the bills raised by the contractor establishment and calculated the provident fund contributions in respect of the nameless and countless employees. It is further claimed by the Appellant that no tenable reasons has been assigned to consider the excluded employees' wages up to Rs. 6500/- and Rs. 15000/- as applicable. In this way, Appellant claims that the calculation is made wrongly, beneficiaries are not identifiable, records of the facts have been ignored during the inquiry, and the order is passed on the sole basis of the Enforcement Officer's report which is based presumptions and conjuncture.
9. In reply to it, learned counsel for the Respondent opposed the contentions raised by the Appellant and stated that during inquiry the documents of the contract has not been provided to the inquiry officer, no supporting document have been filed by the employer, explanation of list of employees are not provided to the Provident Fund Commissioner, and lastly that 50% of the assessment is with regard to the direct employees and other 50% of the assessment is with regard to the indirect employees.
10. Further, learned counsel for the Respondent argued that the Respondent commissioner has passed the order after following the due procedure of principle of natural justice.

केन्द्रीय सरकार औद्योगिक अधिकरण न्यायालय, नं. १
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Further stated that the Act is beneficial piece of legislation for the welfare of the working class and for the purposes of social security.

11. Having considered the submissions raised by both the parties, records available in the appeal file, and circumstances of the case, I am of the considered view that arguable points are involved in this appeal which is having serious civil consequences.

12. It transpires from the record that the assessed amount is to tune of Rs. 14,72,551 and the period of assessment is spread over in between 06/2012 to 05/2016. On hearing both the parties and considering the submissions raised by the Appellant, the prima facie case for reduction of the pre-deposit amount from 75% to 50% is made out. Also, considering the financial problems due to COVID-19 pandemic, the balance of convenience is in the favour of the appellant at this point of time.

13. In view of the above reasons, following order is passed:

    a. Appeal is admitted subject to deposit of 50% as pre-deposit of the assessed amount within a period of six weeks from communication of this order.

    b. After depositing the ordered amount, the impugned order shall remain stayed.

14. This miscellaneous application no. 15(W)/2021 and 15(s)/2021 are finally disposed of accordingly.

Sd/-

(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER