BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

PRESENT

JUSTICE R.N. KAKKAR

CGIT-1/EPFA/45/2021

Parties:

M/s. Baron Shipping and Logistics

V/s.

APFC, Vashi

Presence:

For the Appellant : Mr.H.L.Chhedda (Authorized Legal Representative)

For the Respondent : Mrs. Kashimira Sawant, Adv.

Mumbai, Dated 13th August 2021

Order on Miscellaneous Application No. 45 (w) and 45 (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 09-04-2021 passed by Assistant Provident Fund Commissioner – Vashi u/s 7-A of the Act.

2. Along with this appeal, Appellant has filed miscellaneous applications for waiver of deposit under proviso to section 7-O of the Act and stay on the impugned order as well as to defreeze the bank account of the Appellant.

3. The impugned order was passed by the Respondent on 09-04-2021 and appeal was filed on 09-07-2021. The miscellaneous application for delay in filing this appeal has been allowed and delay was condoned by the separate order.

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 on the impugned order as to defreeze the bank account of the Appellant.

5. Reply/say on the waiver application and stay application has been filed by the Respondent.
6. Heard both the parties at length.

7. It is the case of the Appellant that M/s Baron Shipping and Logistics (hereinafter referred to as 'Appellant') is a covered establishment for the purposes of the Act. It is stated by the Appellant that it has elected to enroll all the persons irrespective of the fact whether eligible or ineligible for the enrollment to the fund under the Employees Enrollment Campaign 2017 and also remitted the dues in accordance to the Scheme. Further, it is claimed by the Appellant that it sought help from the Respondent's office for rendering compliance under the campaign but there was no response to the request made by the Appellant. Further, it is stated by the Appellant that the Respondent, ignoring the records of the evidence submitted by the Appellant and also ignoring the guidelines and without analyzing the EO's deposition, conducted the enquiry to determine the dues payable by the Appellant for the period from 07/2011 to 05/2017. It is submitted by the Appellant that during the enquiry, the Form 11 submitted by the Appellant and recorded by the EO in his deposition has considered the salary

of the excluded employees for computing the PF contribution dues. Appellant claims that it has never agreed to contribute whose salary was over and above Rs. 6500/- and Rs. 15000/- as the case may be and that the Provident Fund Commissioner considered the salaries of the excluded employees for computing the PF contributions which is untenable. Further, as claimed by the Appellant, PF commissioner did not decide whether the allowances paid by the Appellant can be treated as part of basic wages or not and in this way, during the enquiry proceedings records of the fact have been ignored and wrongly fastened the liability on the Appellant. It is also the case of the Appellant that out of assessed amount of Rs. 31,49,109/- the Appellant has already remitted Rs. 14,82,560/- only which works as 47.08% of the total assessment. On these grounds, the contention of the Appellant is that the impugned order is passed in gross violation of principle of natural justice and if the pre-deposit of 75% of the alleged demand for entertaining the appeal is insisted then it will double jeopardize the Appellant and hence the interference of this Tribunal is solicited.

8. It is also the case of the Appellant that Respondent has not followed the principles of laws, practice, and procedures, and further that there has been clear non-application of mind and non-speaking order was passed by the Respondent. Also, the Appellant submitted that the impugned order was passed without jurisdiction with no identification and no opportunity for cross-examination to Enforcement Officer, order is bad in law and not sustainable in the eye of law, prima facie case on merits is in favor of the Appellant, and therefore stay on the impugned order is being sought. Further, prayer has been made to grant the stay and to defreeze the bank account with immediate effect.

9. In reply to the above contentions of the Appellant, the learned counsel for the Respondent stated that the impugned order is passed for the period from 07/2011 to 05/2017 for the amount of Rs. 16,66,549/- only and that order was received on 19/04/2021 and thereafter appeal was filed on 09-07-2021. Further, it is stated by the Respondent that notice was received by the Respondent on 19-07-2021 while in between on 13-07-2021 Respondent took action under Section 8-F to attach the bank account of the Appellant. It is submitted by the Respondent that till 13-07-2021, Appellant had not provided any proof to the Respondent of filing the Appeal and the assessment authority was absolutely unaware of filing of the appeal. It is the case of the Respondent that the authorities exercised their powers u/s 8-F after completion of sixty days from the receipt of the 7-A order by following all the procedures. Other arguments by learned counsel for the Respondent includes that the Respondent Commissioner has given full analysis and the reasons for assessing the dues in the impugned order, opportunity of hearing was afforded to the Appellant during the inquiry, and the prayer made by the Appellant for complete waiver is baseless since the enactment is a social and welfare legislation and to protect the poor employees and their families from facing penurious situation in the old age. Further, it is submitted by the learned counsel for the Respondent that there is no exceptional circumstances for claiming the waiver as per the Section 7-O of the Act and that the Appellant failed to fulfill the compliance under the provisions of EEC 2017 Scheme and further during the period of enquiry under section 7-A the establishment in the year 2020 has remitted the dues of Rs. 14,82,560/- for some employees.

10. Having considered the submissions raised by both the parties and perusal of the records available in the appeal file, it is clear that the assessment enquiry under

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Section 7-A was conducted in respect of Rs. 31,49,109/- and before the conclusion of the enquiry on 09-04-2021 the establishment has remitted the dues of Rs. 14,82,560/- till December 2020 for some of the employees as well as in EEC 2017. So far the applicability of the Scheme is concerned, and the assessment thereof, this could only be decided on merits at the time of final argument in this appeal. At this stage, arguable questions are involved and the prima facie with balance of convenience case is in favor of the Appellant.

11. In the view of aforesaid reasons made hereinbefore, the pre-deposit for entertaining this appeal is hereby reduced from 75% to 25% which is to be deposited within a period of six weeks from date of receipt of this order.

12. I, hereby, pass the following orders:

   a. Appeal is admitted subject to deposit of 25% of the assessed amount under Section 7-A of the Act.
   b. The deposit is to be made within a period of six weeks from date of receipt of this order.
   c. After depositing the said amount, the impugned order shall remain stayed.
   d. After depositing the said amount, bank account of the Appellant is to be defreezed.

13. Miscellaneous application no. 45(w) and 45(s) is disposed of.

केन्द्रीय सरकार औद्योगिक अधिकरण न्यायालय, नं. १
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Sd/-

(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER