CGIT -1 EPFA/35 of 2022

18.10.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty
Presiding Officer

M/s. Maharashtra Control Panel Pvt. Ltd. ... Appellant
Vs

Regional Provident Fund Commissioner ... Respondent
Thane

Presence:

For the Appellant	:	Mr.H.L.Chheda, Authorized Legal Representative
For the Respondent	:	Mrs. Jyoti Panvalkar, Adv.

O R D E R

This order deals with the admission of the appeal, and separate petitions filed by the appellant praying condonation of delay, interim stay on execution of the impugned order and waiver of the condition prescribed u/s 7O 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 being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing. No written objection has been filed to the petitions. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 30.12.2019. The appellant has stated that the same was received on 11.03.2020 and the appeal has been filed on 26.05.2022. Though the same has been filed beyond the prescribed period of limitation, as per the order passed by the Hon'ble Supreme Court in Suomoto WPC No. 03/20 granting extension of limitation upto 28.02.2022 and to a further period of 90 days from that day, the appeal is in time. He thereby prayed for condonation of delay. There is no dispute about the extension of limitation granted by the Hon'ble Supreme Court on account of the impact of COIVD19. Since, the appeal has been filed within the said extended period of limitation, the delay is condoned.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed by the commissioner assessing Rs. 37,49,984/-as omitted PF dues of the employees payable by the employer. The order has been passed without considering the submission made and the documents produced during the inquiry and the order is solely based on the report of the EO. Being called by the commissioner though all the available documents were produced and the establishment had extended all necessary co-operation the commissioner failed to appreciate the fact and law. It was explained to the commissioner that the earlier a summoned was received initiating an inquiry u/s 7Aand it was indicated that the appellant company had stopped the manufacturing from 2011 for financial difficulty. Even though the company has been held primafacie liable for default from 2004, the respondent having knowledge about the closure of the business has not initiated any proceeding for damage. The balance sheet and all other documents were produced. Though the enforcement officer had made the calculation in respect of 28 employees working for the appellant in the year 2003 in fact there was no business since 2011. On 27.12.2019 the report of the EO was handed over to the director of the company and the matter was adjourned to 30.12.2019 for appellants reply. But surprisingly without affording proper opportunity to reply the said report the order was passed on 30.12.2019 defying the Principles of Natural Justice. Thus, the appellant has pleaded that the appellant has strong case to argue and fair chance of success. In view of the closure of the business any order directing deposit in compliance of the provision of section 7O would be prejudicial to him. Hence, the tribunal, in exercise of discretion be pleased to waive the condition of pre deposit.

No written reply has been filed by the respondent.

Considering the submission advanced by the counsel for the appellant 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 of the EO. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance on the wages paid to the employees and the establishment has disputed it's liability for the same on account of closure of the business. Whether or not the appellant is liable to make contribution on the wages is the point to be adjudicated in this appeal.

Thus 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 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 CGIT Mumbai, 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 **15.12.2022** for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

PRESIDING OFFICER

CGIT-1 MUMBAI