IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11533/2015

M/s. Rambo Fabrics (P) Ltd. & Ors. … Petitioners

V/s.

The Union of India & Ors. … Respondents

Ms. Sheena C. Patil for the petitioner
Mr. Suresh Kumar for the Respondent Nos.2 to 5.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 24, 2016

P.C. :

1. Heard the learned counsel for the parties. By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 22.09.2015 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in ATA No.1062(9)2015 dismissing the petitioner's appeal challenging the order dated 19.05.2014 passed by the Commissioner u/s. 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (said Act) on the ground that the petitioner filed the said appeal beyond the prescribed period as per Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules 1997 (said Rules).

2. In the present proceedings, the Assistant Provident Fund Officer, Regional Office, Mumbai-II, Thane passed order dated 19.05.2014

holding that the petitioner has to pay sum of Rs.20,12,413/- towards provident fund dues for the period April 2006 to November 2012.

3. Being aggrieved by the said order, the petitioner preferred an appeal u/s. 7-I of the said Act before the appellate authority on 11.09.2015. As per Rule 7(2) of the said Rules the authority can condone the delay of further 60 days, if sufficient cause is shown. Hence, the Writ Petition.

4. The learned counsel for the petitioner submits that when the order was passed by the Assistant Provident Fund Commissioner on 19.05.2014, none appeared for the petitioner. He further submits that though the petitioner engaged an advocate, he failed to take appropriate steps to protect the petitioner's interest. He submits that they already cleared their dues under the said Act and therefore, there is no question of paying the same again. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the appeal u/s. 7(1) of the said Act before the appellate tribunal. He submits that if delay is not condoned, irreparable loss will be caused to the petitioner. He submits that the petitioner has good chance of success in the present proceedings.

5. On the other hand, the learned counsel for the respondent authority vehemently opposed the Writ Petition. He submits that admittedly, there was delay on the part of the petitioner to prefer an appeal for more than 120 days. He submits that section 5 of the Limitation Act, is not applicable in the present proceedings. He submits

that the Division Bench of this court in ***The Manganga Sahakari Sakhar Karkhana Vs. Assistant Provident Fund Commissioner in Writ Petition No.2101/2015 decided on 05.11.2014*** taken a view that section 5 of the Limitation Act is not applicable in such type of proceedings and therefore, the authority has no right and/or power to condone the delay of more than 120 days. He relies on paragraph 8 of the said judgment which reads thus:

> *"8. The first proviso to Sub Rule 2 of Rule 7 confers power on the Appellate Tribunal to condone the delay. The very fact that a provision has been made in the Rule conferring a power on the Appellate Tribunal to condone the delay shows that the legislature intended to exclude the applicability of section 5 of the Limitation Act. Moreover, the legislature has specifically provided that the Appellate Tribunal can condone the delay provided it is of a period of maximum 60 days. In any event, this provision shows that legislature specifically intended to exclude the power conferred under section 5 of the Limitation Act to condone delay or to extend the period of limitation beyond the period of 60 days. Therefore, on plain reading of the provisions of the said Act and the said Rules the petitioner cannot rely upon subsection 2 of section. Thus, the applicability of the relevant provisions of section 5 of the Limitation Act to an appeal under section 7 (I) of the said Act stands excluded. Therefore, we find no merit in the challenge to the impugned order of the Appellate Tribunal. We accordingly reject the petition."*

6. The learned counsel for the respondent authority submits that if the amount in respect of 19 identified employees during the period from March 2006 was already paid by the petitioner as stated in paragraph 2 of the order dated 19.05.2014 passed by the Assistant Provident Commissioner, Regional Office, Mumbai-2, Thane u/s. 7-A of the said Act in respect of M/s. Rambo Fabrics (P) Ltd., same can be considered at the time of executing the impugned order. He submits

that they have no objection to give credit to the amount already paid by the petitioner, subject to verification from the records. On the basis of this submission, the learned counsel for the respondent submits that there is no substance in the Writ Petition. Same be dismissed with costs.

7. Heard both sides at length. Admittedly, there is a delay on the part of the petitioner to file an appeal u/s. 7-I of the said Act before the appellate tribunal, New Delhi. As per Rule 7(2) of the said Rules, the authority has power to condone the delay only upto 120 days. Considering these facts and the judgment of this court in ***Manganga Sahakari Sakhar Karkhana Ltd. (***supra), I am of the opinion that the impugned order is according to law. There is no question of entertaining the Writ Petition. Same stands rejected.

(**K.K. TATED, J.**)