IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10434 OF 2012

THE ASST. P. F. COMMISSIONER AND ANR
VERSUS
M/S MAHESH PRINTERS PVT. LTD.
...
Advocate for Petitioners : Shri Chaudhary K.B.
Advocate for Respondent : Shri Upadhye V.N.
...
CORAM : RAVINDRA V. GHUGE, J.
Dated: February 22, 2017
...

PER COURT :-

1. I have heard the learned Advocates for the petitioners and the respondent / establishment.

2. Two issues have been raised for the consideration of this Court, which are as under:-

> " (A) Whether the 7A assessment by order dated 30.11.2006 for an amount of Rs.6,52,455/- is only in relation to the leave encashment or any other unpaid provident fund contribution?
>
> (B) Whether in the absence of any application for condonation of delay under Rule 7(2) and the proviso there below of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules 1997 ("the Rules of 1997"), the employees PF Appellate Tribunal was justified in entertaining the Appeal No.834(9)/2007 dated 15.12.2007, challenging Section 7A order, dated 30.11.2006?"

3. Rule 7 of the 1997 Rules reads as under:-

*“**7. Fee, time for filing appeal, deposit of amount due on filing appeal.—** (1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.*

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Rule 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Rule 7-O.”

4. It is obvious that an appeal can be filed within 60 days from the date of the order before the appellate tribunal. The proviso enables the tribunal to enlarge the limitation to a further period of 60 days. It is, therefore, specifically prescribed that such an appeal can be filed within 120 days.

5. The respondent / appellant has not filed an application for condonation of delay. There is no verdict by the appellate tribunal as to whether the delay deserves to be condoned or as to whether the delay of 7 months beyond 120 days, cannot be condoned on account of a lack of provision. Admittedly, an application for condonation of delay was not filed.

6. The appellate tribunal has concluded that the leave encashment would not amount to wages and as such, there can be no payment of P.F. contribution on such amounts. However, the issue would be as to whether the appeal was tenable under Section 7-I if the Tribunal had no power to enlarge the limitation beyond 120 days. The said issue has not been dealt with by the Tribunal.

7. Considering the above, this petition is partly allowed. The impugned order dated 4.8.2011 is quashed and set aside and the appeal KTA No. 834(9) of 2007, filed by the respondent is remitted to

the E.P.F. Appellate Tribunal, New Delhi for framing and deciding an issue as to whether delay beyond 120 days can be condoned by the tribunal under Rule 7(2) read with the proviso thereunder.

8. Needless to state, both the litigating sides shall appear before the appellate tribunal on 24.3.2017. The tribunal need not issue formal notice of hearing to the parties and thereafter proceed to decide the issue as set out herein above.

9. The amount already deposited with the appellate tribunal shall be invested in a short term fixed deposit receipt, if not already invested. In the event the money has been withdrawn by the respondent, the tribunal shall consider passing necessary orders under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(RAVINDRA V. GHUGE, J.)

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akl/d