$~17

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9052/2015

Date of Decision: 11th September, 2017

M/S ETA ENGINEERING PVT. LTD. ..... Petitioner
Through: Mr.Sarsar Raza and Mr.Abuzar Farooque, Advs.

versus

EMPLOYEES PROVIDENT FUND OFFICE ..... Respondent
Through: Mr.Keshav Mohan and Mr.Piyush Choudhary, Advs.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. It has been submitted on behalf of the petitioner that in terms of directions dated 25.07.2017, 50% of the amount in terms of impugned order dated 08.10.2014 of the Regional Provident Fund Commissioner-II has been deposited with the Registrar General, of this Court and the report of the Registry indicates that a sum of Rs.16,16,654/- has been so deposited by the petitioner in an FDR.

2. It is submitted on behalf of the respondent that no counter affidavit is sought to be filed to the petition.

3. Arguments have been addressed on behalf of either side qua the petition vide which the petitioner seeks the setting aside of the impugned order dated 12.08.2015 of the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 845(4)/2015 vide which the appeal filed by the petitioner herein as appellant thereof

challenging the order dated 08.10.2014 under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 vide which the employer i.e. petitioner herein in relation to the petitioner's establishment M/s ETA Engineering Pvt. Ltd. was directed to pay Rs.32,33,308/- towards damages under Section 14-B and interest under Section 7-Q of the E.P.F. & M.P.Act, 1952 for the period 04/1996 to 03/2014, was dismissed being time barred, it having been held that the appeal has not been filed within a period of sixty days from the date of the knowledge of the order dated 08.10.2014 which knowledge as per observations in the impugned order dated 12.08.2015 is stated to have been acquired by the appellant i.e. present petitioner on 17.10.2014 at least.

4. On behalf of the petitioner it has been submitted that the petitioner had always been pursuing the matter before the Regional Provident Fund Commissioner-II, Regional Office, Delhi (South) and that it was only on the date i.e. 08.10.2014 that it could not put in appearance in view of the erroneous presumption that the date 08.10.2014 was a holiday due to Valmiki Jayanti and was under the impression that it would be deferred to a further date of hearing before the Regional Provident Fund Commissioner-II. Qua the said submission a copy of the application dated 17.10.2014 has been placed on record as annexed to the petition as Annexure P-6 sent by the petitioner to Regional Provident Fund Commissioner-II submitting, *inter alia,* to the effect that it learnt of the proceedings dated 08.10.2014 only on 17.10.2014 and that the non appearance of the petitioner on 08.10.2014 before the Regional Provident Fund

Commissioner-II was not deliberate nor intentional and the absence of the petitioner on 08.10.2014 had resulted into an ex parte order under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 and furthermore the applicant therein i.e. petitioner herein sought that it be allowed to represent its case on merits and **also made a submission through the said letter dated 17.10.2014 that it had not received copy of the order proceeding ex parte dated 08.10.2014**.

5. It has further been submitted on behalf of the petitioner that thereafter there was another letter dated 04.11.2014 that had been issued by the petitioner to the Regional Provident Fund Commissioner-II, Employees Provident Fund Organization (EPFO) office submitting, *inter alia,* to the effect that it be given a reasonable, fair and effective opportunity of being heard and that it **had not received any response to its letter dated 17.10.2014 and had received no communication in this regard**.

6. It has further been submitted on behalf of the petitioner that vide letter dated 29.12.2014 to the Assistant Provident Fund Commissioner it was once again submitted by the petitioner **that it had not received any copy of the order i.e. order in question dated 08.10.2014 till the said date.** Vide this letter dated 29.12.2014 the petitioner has responded to letter dated 12.12.2014 issued by the Assistant Provident Fund Commissioner directing the deposit of the amount in terms of the order under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952. It has been further submitted by the petitioner that vide letter dated 27.02.2015 addressed to the Assistant Provident Fund Commissioner, **the petitioner once again sought the copy of the**

order so that it could defend its case on merits and thereafter another letter dated 27.03.2015 was sent to the Provident Fund Commissioner once again, *inter alia,* stating that the **copy of the order had not been supplied**. It has been further submitted on behalf of the petitioner that copy of the letter dated 27.03.2015 had been addressed to the Labour Minster, Govt. of India, the Labour Minister, Govt. of Delhi and The Chief Minister of Delhi and vide letter dated 16.04.2015 No. CMO/PGMS/2015/452 copy of the representation received from the petitioner regarding the complaint against the EFPO had been sent to the Ministry of Labour and Employment, Govt. of India and thereafter vide e-mail dated 16.07.2015 indicated to have been sent at 12:51 PM from the Regional Office, Delhi (South) EPFO,Ministry of Labour, the copy of order dated 08.10.2014 under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 was received by the petitioner on 16.07.2015 and it has been submitted on behalf of the petitioner that immediately on receipt of the said copy of the order dated 08.10.2014 vide email on 16.07.2015, the appeal was filed on 30.07.2015 diligently.

7. It has thus been sought on behalf of the petitioner that an opportunity of fair hearing in accordance with law and the principles of natural justice be accorded to it before the EPFAT, New Delhi against the order dated 08.10.2014 and that the matter be remanded back in relation thereto.

8. On behalf of the respondent, learned counsel for the respondent has vehemently opposed the petition submitting, *inter alia,* to the effect that Annexure-2 annexed to the petition, a letter dated

30.10.2014 of the Assistant Provident Fund Commissioner, Delhi (South) whereby the order 08.10.2014 under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 had been indicated to have been sent to the petitioner and that apart from the same, the petitioner had not filed the requisite application in terms of Rule 20(2) of the EPFAT (Procedure) Rules 1997 with such fees as were required to be submitted and that thus the petitioner is not entitled to any relief whatsoever.

9. Reliance has further been placed on behalf of the respondent on the verdict of the Division Bench of this Court in LPA No.533/2014 ***Saiint Soldier Modern Senior Secondary School vs. Regional Provident Fund Commissioner*** **2014 SCC online Del 4496 (2015) 144 ELR 109** decided on 02.09.2014 whereby it has been observed to the effect that Section 7(1) of the Act read with Rule 7(2) and the proviso thereto of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, empowers the Tribunal to extend the period for filing an appeal only for a further period of sixty days, if it was satisfied that the appellant has been prevented by sufficient cause from preferring the appeal within the initial period of sixty days in terms of Rule 7(2) of Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, and that for computing the period of limitation prescribed for preferring the appeal under Rule 7(2) of the said Rules, all the provisions in terms of Sections 4 to 24 of the Limitation Act, 1963 would apply subject to Section 29(2) of the same Act as the EFP and M.P. Act, 1952 is a special Act, and no further extension of time beyond 120 days as sought to be granted, can be

granted by the Tribunal.

10. On behalf of the petitioner, in response, it has been submitted that the letter dated 30.10.2014 sent by the Assistant Provident Fund Commissioner, Delhi (South) stating therein that the copy of the order dated 08.10.2014 under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 had been communicated to the petitioner was in fact not received by the petitioner in as much as the said order had been addressed to the petitioner at its address at 503-504, Prakash Deep Building, Tolstoy Marg, Connaught Place, New Delhi-110001, at which the petitioner had ceased to work w.e.f. 31.07.2014.

11. In reply to a specific query, it has been submitted and also borne out from the perusal of the record that the communication that had been sent by the petitioner to the EPFO seeking a copy of the proceedings dated 08.10.2014 had been sent from the Noida address of the petitioner and not from the Tolstoy Marg, New Delhi address. It has also been submitted on behalf of the petitioner that a similar submission is made in the present petition also.

12. Learned counsel for the petitioner has also submitted that the reliance placed on behalf of the respondent on the verdict of the Division Bench of this Court in LPA No.533/2014 ***Saint Soldier Modern Senior Secondary School vs. Regional Provident Fund Commissioner*** **2014 SCC online Del 4496** decided on 02.09.2014 on behalf of the respondent, is misplaced as the facts therein are not *pari materia* with the facts of the instant case, which contention is apparently correct as per record, in as much as the present case does not relate merely to a case of condonation of delay simpliciter in filing

the appeal but also qua the violation of the principles of natural justice. The present case is not a case of condonation of delay, in as much as the copy of the order dated 08.10.2014 under Section 14-B and 7-Q of the E.P.F. & M.P.Act, 1952 had not been received at all by the petitioner.

13. Undoubtedly, there appears to be a lapse on the part of the petitioner in non-compliance of the provisions of Rule 20(2) of the Employees Provident Fund Tribunal Procedural Rule in seeking the supply of the copy of the order dated 08.10.2014 of the Regional Provident Fund Commissioner so that it could assail the said order before the Employees Provident Fund Tribunal. Be that as it may, however, as the record of the present petition is a clear indicator in view of the communication sent vide letter dated 12.12.2014 of the Assistant Provident Fund Commissioner, Delhi (South) to the petitioner that letters dated 17.10.2014 and 04.11.2014 of the petitioner which, *inter alia,* sought the copy of the order dated 08.10.2014 had in fact been received by the Provident Fund Commissioner Office.

14. In the specific facts and circumstances of the instant case, as it is apparent that the copy of the order dated 08.10.2014 was thereafter communicated to the petitioner only vide e-mail dated 16.07.2015, it is apparent that without a copy of the order dated 08.10.2014 the petitioner could not have appropriately sought redressal before the Employees Provident Fund Appellate Tribunal. In the circumstances of the instant case thus,- in as much as the copy of the order dated 08.10.2014 was not received by the petitioner till the date 16.07.2015,

the impugned order dated 12.08.2015 of the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 845(4)/2015 is set aside and the matter is remanded to the CGIT, New Delhi to whom it is transferred in terms of Section 185(4) of the Finance Act 2017 and Gazette Notification No. SO 1696 (E) dated 26.05.2017 issued by the Ministry of Finance, Department of Revenue, Govt. of India, to take up the appeal ATA No. 845(4)/2015 for hearing in accordance with law. The amount deposited by the petitioner in terms of order dated 25.07.2017 in the present W.P.(C) No. 9052/2015 shall continue to remain so deposited till disposal of the appeal by the Employees Provident Fund Appellate Tribunal, New Delhi.

15. The petition is disposed of accordingly.

ANU MALHOTRA, J

SEPTEMBER 11, 2017
mr