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

\+ W.P.(C) 9826/2017 & CM Nos.39992-93/2017

M/S TELENOR (INDIA) LCOMMUNICATIONS PVT. LTD. ..... Petitioner

Through: Mr. Shailesh Kapoor, Advocate

versus

REGIONAL PROVDENT FUND COMMISSIONER ..... Respondent

Through: Mr. Satpal Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **13.11.2017**

The petitioner has filed the present petition under Article 226 of the Constitution of India against the order dated 12.10.2017 passed by P.O. CGIT under Section 7-O of the Employee (Provident Fund and Miscellaneous Provisions) Act.

Learned counsel for the petitioner submits that the Tribunal has failed to take into consideration the judgments mentioned in page No.2 of the impugned order while ordering for deposit of 75% of the assessed amount under Section 7-O within four weeks' time. Learned counsel for the respondent submits that this Court may ask the Tribunal to reconsider the issue and review the impugned order, in view of the aforesaid submission of the learned counsel for the petitioner.

It is held in the matter of ***ITC Limited v. CC (Appeals) and CE and Ors., MANU/UP/0515/2003*** as under:

“35. In view of the above, the aforesaid authorities make it clear that the Court should not grant interim relief/stay of the recovery merely by asking of a party. It has to maintain a balance between the rights of an individual and the State so far as the recovery of sovereign dues is concerned. While considering the application for stay/waiver of a pre-deposit, as required under the law, the Court must apply its mind as to whether the appellant has a strong prima facie case on merit. In case it is covered by the judgment of a Court/Tribunal binding upon the Appellate Authority, it should apply its mind as to whether in view of the said judgment, the appellant is likely to succeed on merit. If an appellant having strong prima facie case, is asked to deposit the amount of assessment so made or penalty so levied, it would cause undue hardship to him, though there may be no financial restrain on the appellant running in a good financial condition. The arguments that appellant is in a position to deposit or if he succeeds in appeal, he will be entitled to get the refund, are not the considerations for deciding the application. The order of the Appellate Authority itself must show that it had applied its mind to the issue raised by the appellant and it has been considered in accordance with the law. The expression "undue hardship" has a wider connotation as it takes within its ambit the case where the assessee is asked to deposit the amount even if he is likely to exonerate from the total liability on disposal of his appeal. Dispensation of deposit should also be allowed where two view are possible. While considering the application for interim relief, the Court must examine all pros and cons involved in the case and further examine that in case recovery is not stayed, the right of appeal conferred by the legislature and refusal to exercise the discretionary power by the authority to stay/waive the pre-deposit condition, would be reduced to nugatory/illusory. Undoubtedly, the interest of the Revenue cannot be jeopardized but that does not mean that in order to protect the interest of the Revenue, the Court or authority should exercise its duty under the law to take into consideration the rights and interest of an individual. It is also clear that before any goods could be subjected to duty, it has to be established that it has been manufactured and it is marketable and to prove that it is marketable, the burden is on the Revenue and not on the manufacturer.

36. In view of the above, we are of the considered opinion that as the Appellate Authority has not addressed to itself any of the issues involved in the appeal rather has gone to the issue of financial hardship which was unwarranted and uncalled for in the fact situation of this case. The order impugned cannot be sustained in the eyes of law and we have no option but to allow this petition and set aside the order impugned."

Further, in the matter of ***Tirath Ram Ahuja Pvt. Ltd. v. Regional Provident Fund Commissioner, MANU/DE/4492/2015***, it has been held as under:

> "7….The matter was remanded back to the Authority for spelling out the reasons for reduction in the assessed amount. Although in the instant case, the 75% of the assessed amount has been directed to be deposited, however, a perusal of the impugned order reflects that none of the submissions raised by the petitioner were considered. It is not suggested that the Tribunal should have made an elaborate order discussing the arguments of the petitioner but the order of the Tribunal should have been more explicit and articulate so as to lend assurance that the case of the petitioner has been properly considered by him. The rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

I have also gone through the impugned order and find that there are no discussions about the judgments relied upon by the petitioner at page No.02 of the impugned order. The Tribunal ought to have made an elaborate order discussing the arguments of the petitioner in the light of the judgments relied upon. The order ought to have been more explicit and articulate so as to lend assurance that the case of the petitioner has been properly considered by the Tribunal. The order itself demonstrates that the judgment relied upon by the petitioner and the arguments advanced by the petitioner have not been addressed properly in the impugned order. Learned counsel for the respondent, after some arguments, submitted that this Court may ask the Tribunal to reconsider the issue and review the impugned order, in view of the aforesaid submissions of learned counsel for the petitioner.

Hence, the impugned order dated 12.10.2017 is set aside. The matter is remanded back to the Tribunal for reconsideration and for passing a fresh order preferably within a period of four weeks from the date of appearance of both the parties after giving them proper opportunity of being heard as well as after duly and properly considering the judgments relied upon and the arguments addressed by learned counsel for the petitioner while deciding the application for waiver of requirement of pre-deposit of 75% of the demanded amount with appeal. Till 20.11.2017, the respondent shall not take any coercive action against the petitioner. However, it is clarified that the order passed shall not tantamount to any expression of this Court on the merits of the case as well as the order.

The parties are directed to appear before the Tribunal on 20.11.2017 at 11:00 am.

The petition is disposed of in the above terms. All the pending applications are also disposed of.

Dasti.

CHANDER SHEKHAR, J

NOVEMBER 13, 2017
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