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

% *Judgment Reserved on: 14.03.2018*

Judgment Pronounced on: 15.05.2018

\+ **WP (C) 6018/2015 & CM APPL. 10924/2015**

M/S. CALCUTTA TEST HOUSE (P) LTD. ....Petitioner

Through: Mr.Rajiv Arora, Advocate.

versus

CENTRAL BOARD OF TRUSTEES E.P.F. ORGANIZATION ...Respondent

Through: Ms.Inderjeet Sidhu, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioner has challenged the order dated 29.05.2015 under Article 226 and 227 of the Constitution of India passed by Employees' Provident Fund Appellate Tribunal, New Delhi (in short 'the Tribunal') in the appeal being ATA No.202(4)2015.

2. While considering the interim relief during the pendency of the appeal challenging the order dated 05.02.2015 issued against it under Section 14B and Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the EPF Act'), the Tribunal observed that the appeal is against the order under Section 14B and Section 7Q of the EPF Act and the

petitioner is supposed to deposit the assessed amount under Section 7Q of the EPF Act since the order under Section 7Q of the EPF Act is not appealable. The Tribunal stayed the impugned order dated 05.02.2015 subject to the petitioner/appellant depositing the amount assessed under Section 7-Q of the Act with the concerned authority within 30 days, failing which the stay order shall be vacated. In fact, the impugned order dated 05.02.2015 is a composite order passed under Section 14B and 7Q of the EPF Act and in view of the judgment of the Apex Court in **Arcot Textile Mills Ltd. vs. Regional Provident Fund Commissioner,** ***AIR 2014 SC 295,*** such order impugned before the Tribunal is appealable. Since the order impugned before the Tribunal was under Section 14B and 7Q of the EPF Act, the petitioner was not required to pre-deposit any amount under Section 7-O of the EPF Act as assessed and determined by EPFC.

3. A Division Bench of this court in **Jai Balaji Security Services (Regd.) Vs. A.P.F.C. Delhi (North)** in ***LPA No. 880/2015 decided on 16.12.2015*** has dealt with the scope of power of the Tribunal to grant interim relief during the pendency of the appeal. Para 15 and 19 of the judgment read as under:-

> **"15. But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay.** Whereas Section 7-I of the Act creates the

forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, **but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.”**

“19. We reiterate once again. Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. **The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where demands raised under Section 7-Q and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the Proviso to Section 7-O of the Act.”**

4. It is conveyed from the above said judgment that the Tribunal would be empowered to pass a conditional order of stay during the pendency of appeal where the demand raised under Section 14-B and 7-Q of the EPF Act has been challenged. Mere pendency of appeal would not prohibit the EPF Authority to effect recovery unless Tribunal stays the recovery by interim order during subsistence of appeal subject to certain conditions.

5. On a close scrutiny of the impugned order of the Tribunal, it appears that the Tribunal has directed the petitioner to deposit the amount as assessed under Section 7-Q of the EPF Act under a wrong impression that the part of the order under Section 7-Q of the EPF Act is not appealable whereas it is a composite order under Section 14B and 7Q of the EPF Act and hence appealable in view of the judgment of the Apex Court in **Arcot Textile Mills Limited** ***(supra)***. Therefore, the impugned order dated 29.05.2015 of the Tribunal is hereby set-aside with the direction that the Tribunal shall decide the request of the petitioner for interim relief afresh on such terms and conditions as it may deem fit during the pendency of the appeal.

6. The petition is disposed of accordingly.

7. CM APPL. 10924/2015 is disposed of as infructuous.

(VINOD GOEL)
JUDGE

MAY 15, 2018
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