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

Date of Decision: 26.09.2019.

+ **W.P.(C) No.3359/2019**

DELHI STATE CIVIL SUPPLIES CORPORATION LTD...Petitioner

Through Mr.Raj Birbal, Sr. Adv. with
Ms.Raavi Birbal, Adv.

versus

**FOOD & ALLIED LOADING UNLOADING MAZDOOR UNION
AND ORS. Respondents**

Through Mr.Umesh Singh, Adv. for R-1.
Mr.M.D. Habib, Adv. for R-3.
Mr.Keshav Mohan, Adv. with
Mr.Piyush Choudhary, Adv. for R-5.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

CM No.30085/2019 (for condonation of delay)

1. This application has been filed by the petitioner seeking condonation of two days' delay in filing the affidavit.
2. For the reasons stated in the application, the same is allowed. Delay of two days in filing the affidavit is condoned.
3. The application is disposed of.

W.P.(C) 3359/2019 & CM Nos.15416/2019 (for stay)

4. The present writ petition under Articles 226 & 227 of the Constitution of India, assails the order dated 10.01.2019 passed by the Central Government Industrial Tribunal, Dwarka Court Complex,

Delhi, exercising the power of the Employees Provident Fund Tribunal under section 7-O of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”), in ATA No.D-1/33/2018, in the appeal filed by the petitioner/organization. In the impugned order, the Tribunal had directed the petitioner to make a pre-deposit of 50% of the assessed amount as a pre-condition for hearing its appeal.

5. Learned counsel for the petitioner submits that the Tribunal, while directing the petitioner to deposit 50% of the assessed amount of Rs.9,47,05,624/-, has overlooked the fact that the respondents had initially issued notice to the petitioner only in respect of dues from January, 2009 to August, 2009, but had proceeded to assess the amount from September, 1984 i.e. for a period of 25 years and hence, the assessment order was wholly without jurisdiction. She submits that in these circumstances, the amount had actually increased many-fold, which aspect has not been considered by the Tribunal while directing the petitioner to make the said pre-deposit.

6. On the other hand, learned counsel for all the respondents submit that once the petitioner itself had not brought out this aspect of the assessment being made for a longer period viz a viz the period mentioned in the show cause notice and its application for stay, based on which the impugned order has been passed, is conspicuously silent in this regard, the same could not have been taken into consideration by the Tribunal. They further submit that the petitioner’s plea that the respondent no. 5 could not have assessed the amount for 25 years, is contrary to the statutory scheme as there is no bar upon the Assessing

Officer to assess dues of the past period if found payable on an inquiry. They, thus, contend that there is no infirmity in the impugned order and, therefore, pray that the writ petition be dismissed.

7. I have considered the submissions of the parties and with their assistance, perused the record.

8. Upon an examination of the petitioner's application for stay filed before the Tribunal as also the impugned order, I find merit in the respondents' contentions that the petitioner had not specifically raised this plea before the Tribunal. The petitioner had not pointed out before the Tribunal that the assessed amount ran into crores only because the respondent no 5, which had initially sought to claim provident dues for a short period of eight months between January, 2009 to August, 2009, had passed an order demanding dues for 25 years. However, the fact remains that the petitioner had, in its appeal, indeed raised this specific plea by way of ground 'NN'. It is also undisputed that the notice based on which the assessment order impugned in the appeal, was passed related only to the period between January, 2009 to August, 2009, while the final assessment relates to the dues for 25 years. In these circumstances, it is evident that it is the petitioner itself, who is at fault for not bringing these relevant facts to the notice of the Tribunal at the time of the passing of the impugned order and consequently, the Tribunal, while exercising its discretion in directing the petitioner to make a pre-deposit of 50% of the assessed amount, has not considered this vital aspect of the matter. The impugned order having been passed without considering all the relevant factors, cannot, therefore, be sustained.

9. However, since it is on account of the petitioner's own lapse that these vital facts were not noticed by the Tribunal, therefore, while setting aside the impugned order and remanding the matter back to the Tribunal, it is deemed appropriate to direct the petitioner to deposit 10% of the assessed amount by way of an interim measure, before the petitioner's application is taken up for consideration by the Tribunal.

10. It is made clear that this Court has not examined the rival contentions of the parties on merits of the assessment order, which is the subject matter of the appeal pending before the Tribunal. Upon remand, it will be open for the Tribunal to decide, after consideration of all relevant facts as may be brought to its notice by both parties, as to the amount of pre-deposit required to be made.

11. The petitioner is granted four weeks' time to make a pre-deposit of the 10% of the assessment amount under the order. It is only after the said amount is deposited by the petitioner before the Tribunal that its application for stay will be taken up for consideration by the Tribunal.

12. The petition and pending application are disposed of in the aforesaid terms.

REKHA PALLI, J

SEPTEMBER 26, 2019/aa