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

Date of Decision:- 27.08.2019.

+ W.P.(C) 9273/2019

M/S SEASONS FURNISHINGS LTD. Petitioner

Through: Mr.Nikhil Patnaik, Adv.

versus

ASSISTANT P.F. COMMISSIONER REGIONAL OFFICE DELHI
EAST AND ANR. Respondents

Through: Mr.Balraj Dhawan, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM No.38239/2019 (for exemption)

Exemption allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 9273/2019 & CM No.38238/2019 (for stay)

1. The present writ petition under Articles 226/227 of the Constitution of India assails the order dated 06.02.2019 passed by respondent no.1 under Section 14 B and 7Q of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 and the consequential recovery certificate dated 31.05.2019.

2. Learned counsel for the petitioner submits that an order dated 06.02.2019 under section 14 B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 read with Section 7A thereof (hereinafter referred to as Act) levying damages of Rs.4,77,446/- on the petitioner was passed by the Assistant Provident Fund Commissioner based whereon the impugned recovery certificate had

been issued on 31.05.2009. He submits that though in terms of section 7 (I) of the Act an assessment order passed under section 7(A) is appealable before the Employees Provident Funds Appellate Tribunal, the petitioner has been precluded from assailing the assessment order by way of an appeal as both the assessment order and the recovery order were sent to the erstwhile address of the petitioner, even though the change in address was specifically communicated to the respondent no.2 through petitioner's letter dated 27.09.2018. He, thus, submits that the assessment order was never served on the petitioner and it is only vide an e-mail dated 06.08.2019 that a copy of the recovery certificate/order was served on the petitioner. Immediately upon receiving a copy of the recovery certificate the petitioner vide its letter dated 12.08.2019 approached the office of the respondent no.1 for supply of a copy of the assessment order, which was then supplied to it on 14.08.2019. He submits that by the time the petitioner was supplied with a copy of the assessment order dated 06.02.2019, the time prescribed for filing a statutory appeal in terms of Rule 7(2) of the Employees Provident Fund Appellant Tribunal (Procedure) Rules, 1997 (hereinafter referred to as 'the Rules') had already expired, compelling the petitioner to approach this Court.

3. He, therefore, submits that while the petitioner is not assailing the merits of the assessment order before this Court, the present petition has been filed only for permission to file an appeal before the Tribunal to assail the assessment order, despite expiry of the time period provided under the Rules.

4. Issue notice.

5. Learned counsel for the respondent, who appears on advance notice accepts notice and submits that in view of the limited issue arising in the present petition, he does not wish to file any counter affidavit. He however opposes the petition on the ground that an efficacious statutory remedy of appeal before the Tribunal is available to the petitioner.

6. I have heard the learned counsel for the parties and with their assistance perused the record.

7. The record clearly shows that the petitioner had vide letter dated 27.09.2018, which was duly received in the office of the respondent no.1, informed the respondent no.1 about the change in its address from D-5, Defence Colony, New Delhi to 64, Ring Road, Lajpat Nagar-III, New Delhi-24. The said letter also informed the respondent no.1 that the petitioner's corporate office was being shifted to A-45, Sector-8, Noida, Gautam Budh Nagar, Uttar Pradesh-201301. Despite the receipt of the aforesaid letter, the assessment order as also the recovery certificate mentioned the erstwhile address of the petitioner. It is thus apparent that no effort whatsoever was made by the respondent no.1 to serve the assessment order or the recovery certificate to the petitioner at its correct address. In fact, it is only vide e-mail dated 06.08.2019 that the petitioner was informed about the recovery certificate and therefore, there is no reason to disbelieve the plea of the petitioner that it learnt about the assessment order only on 06.08.2019 and received copies thereof on 14.08.2019, when the period prescribed for filing an appeal had already stood expired. At

this stage, a reference be made to section 7 (2) of the Rules:-

“Rule 7 (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 a Tribunal unless he has [deposited with the Tribunal a Demand Draft payable in the Fund and bearing] 75 percent of the amount due from him as determined under section 7A:

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

8. Once the limited prayer made by the petitioner before this Court itself is only for permission to file an appeal before the Tribunal which has become time barred, there is no merit in the sole objection raised by the learned counsel for the respondent that in the light of an equally efficacious statutory remedy by way of an appeal before the Tribunal being available to the petitioner, the present writ petition is not maintainable.

9. The facts noted hereinabove, make it evident that it is the respondent itself, which is at fault in not communicating the impugned orders to the petitioner at its correct address as available in its own records. It is solely because of the respondent's own default

that the petitioner was unable to file an appeal within the prescribed period and therefore, it will be unfair to deprive the petitioner of its right to avail the statutory remedy of appeal against the assessment order. In view of the admitted position that the Tribunal does not have power to condone the delay in filing the appeal beyond 120 days, the only remedy available to the petitioner was to approach this Court by way of the present writ petition.

10. For the aforesaid reasons, the writ petition deserves to be allowed. Without commenting on the merits of the impugned assessment order and the consequential recovery certificate, the petitioner is granted one week's time to file an appeal before the Tribunal in accordance with Section 7 (I) of the Act. In case such an appeal is preferred by the petitioner within the next one week, the same will not be rejected by the Tribunal on the ground of limitation and will be treated as being within the prescribed time period. The Tribunal is directed to deal with the appeal on its own merits.

11. The operation of the impugned order will remain stayed for one week, whereafter it will be subject to further orders passed by the Tribunal. It is further made clear that this Court has not expressed any opinion either on the merits of the assessment order or on the merits of the recovery certificate.

12. The petition is disposed of along with the pending application.

DASTI.

REKHA PALLI, J

AUGUST 27, 2019/gm