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

Date of Decision:- 14.11.2019

\+ W.P.(C) 10362/2019, CM No.42758/2019 (stay) & CM No.42767/2019 (delay)

M/S ADIGEAR INTERNATIONAL ..... Petitioner

Through: Mr. Hrishikesh Baruahm, Mr. Pranav Jain and Mr. Siddhant Kaushik, Advs.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER AND ANR. ..... Respondents

Through: Mr. Keshav Mohan and Mr. Piyush Choudhary, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the employer assails the order dated 21.03.2016 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No.34(3) of 2016. Under the impugned order, the petitioner was directed to deposit 30% of the assessed amount as a precondition for admitting its appeal against the assessment order. The petitioner also assails the consequential order dated 04.07.2016 passed by the Tribunal rejecting the petitioner's appeal upon its failure to make the pre-deposit, as directed.

2. After some arguments learned counsel for the petitioner submits that due to the financial difficulties being then faced by the

petitioner the pre-deposit could not be made within the stipulated time to the Tribunal but now the petitioner is willing to make the said pre-deposit and prays that the matter be remanded back to the Tribunal for adjudication on merits so as to enable the petitioner to demonstrate before the Tribunal that the assessment order is wholly unsustainable. In support of his contention he places reliance on a decision of the Supreme Court in ***M/s Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and Others*** *(1992) 2 SCC 598.*

3. On the other hand, learned counsel for the respondents submits that the petitioner has been a repeated defaulter and deserves no indulgence from this Court. He submits that the assessment order was passed by the Assistant Provident Fund Commissioner on 22.12.2014, the petitioner preferred a belated appeal after an inordinate delay i.e. of more than a year in January, 2016. Upon dismissal of its appeal by the Tribunal, the present writ petition also came to be filed in September, 2019 after an unexplained delay of more than 3½ years. He, however, submits that even if the matter is remanded back for re-adjudication of the petitioner's appeal on merits, the same should be subject to heavy costs.

4. Keeping in view the peculiar facts of the case as set out in the petition as also the stand taken by the respondent, with the consent of the parties, the writ petition is allowed and subject to the petitioner making the pre-deposit as directed by the Tribunal vide its order dated 21.03.2014 within eight weeks and paying costs of Rs.5,00,000/- to the respondent within the same period, the orders dated 21.03.2016 and 04.07.2016 are quashed. The matter is remanded back to the

Tribunal for fresh adjudication of the petitioner's appeal on merits.

5. The parties will appear before the Tribunal on 29.01.2020, on which date, the Tribunal will proceed to hear the appeal on merits, subject to the petitioner furnishing proof of having complied with this order.

6. The writ petition, along with pending applications, is disposed of. It is made clear that if the deposit is not made by the petitioner within the time so granted, the petitioner's appeal will not be restored. In view of the time being granted to the petitioner no coercive action in terms of the assessment order dated 22.12.2014 will be taken by the respondents against the petitioner till 29.01.2020 whereafter it will be open for the Tribunal to consider as to whether the operation of the assessment order should remain stayed or not.

7. It is made clear that this Court has not expressed any opinion on the merits of the case and it will be open for the Tribunal to examine the appeal on its own merits in accordance with law.

REKHA PALLI, J

NOVEMBER 14, 2019
'SDP'