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

+ **W.P.(C) 5864/2020 & CM APPLs. 21181-82/2020**

GAPL AUTOMOTIVE PVT LTD

..... Petitioner

Through: Mr. S.K. Gupta, Advocate.
(M:9891170907)

versus

**ASSISTANT PROVIDENT FUND
COMMISSIONER**

..... Respondent

Through: Mr. Shivanath Mahanta, Advocate.
(M:7678175865)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **01.09.2020**

1. This hearing has been held through video conferencing.
2. The present petition has been filed by the Petitioner seeking setting aside of the impugned order dated 30th July, 2020 passed by the Central Government Industrial Tribunal cum Labor Court (*hereinafter*, “CGIT”), which was in an appeal challenging the original order dated 30th December, 2019 passed by the Assistant Provident Fund Commissioner (*hereinafter*, “APFC”). The petition also impugns the APFC’s order dated 30th December, 2019 as well as the Regional Provident Fund Commissioner’s (*hereinafter*, “RPFC”) recovery certificate dated 2nd July, 2020.
3. The brief case of the Petitioner is that it was covered by the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 only with effect from 2011. On 28th February, 2011, the Petitioner wrote a letter to the RPFC seeking allotment of a P.F. code number. With the said letter, the Petitioner also enclosed a sum of Rs.50,000/- by way of cheque

payment to the RPFC. The P.F. code number was, however, not allotted and the cheque of Rs.50,000/- was also not deposited by the RPFC. The advocate, who was representing the Petitioner, thereafter, visited the RPFC's office and followed up with the office for allotment of the P.F. code. The code was only allotted to the Petitioner in 2013. Thereafter, the Petitioner had deposited all the past dues of the Provident Fund and has continued to deposit the same.

4. On 20th March, 2014, the Petitioner received a show cause notice alleging that there was a delay in the payment by the Petitioner of the Provident Fund for the period from 2010 to 2013. Damages and interest were sought to be levied by the RPFC. A written representation was given by the Petitioner, however, the impugned order dated 30th December, 2019 was passed imposing damages of Rs.1,39,309/- and interest of Rs.66,864. The Petitioner challenged the same before the CGIT and vide the impugned order dated 30th July, 2020, the CGIT has directed deposit of Rs.30,000/- insofar as the damages are concerned. Insofar as the interest is concerned, no relief has been granted.

5. The Court has heard the counsel for the parties. On behalf of the Petitioner Mr. S. K. Gupta, Id. counsel relies upon the judgment of the High Court of Bombay in **Poona Shims Pvt. Ltd. v. BP Ramaiah, RPFC, 2007(112) FLR 1196** to the effect that if the P.F. code is not allotted by the authorities in time, the Petitioner cannot be blamed. Mr. Shivanath Mahanta, Id. counsel for the Respondent, on the other hand, submits that the deposit ought to have been directed even in respect of the interest component.

6. After perusing the record and going through the judgment of the Bombay High Court, it is clear that for the fault of the Department, the

Petitioner cannot be punished. Accordingly, this Court is of the opinion that the appeal of the Petitioner should be heard on merits as to whether the order dated 30th December 2019 and the consequential recovery certificate of the RPFC dated 2nd July, 2020 can be sustained. Accordingly, without insisting on any further deposit in respect of the interest component, the appeal shall be heard by CGIT on merits and disposed of within a period of three months from the first date of hearing. A comprehensive order shall be passed by the CGIT on merits and the grievances in respect of the impugned order dated 30th July, 2020 and the levying of damages and payment of interest shall also be decided.

7. List before the CGIT on 5th October, 2020.

8. With these observations, the petition is allowed in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 1, 2020

dj/T