IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6961 OF 2018

M/s.Santek Equipment Pvt.Ltd. **…Petitioner**
vs.
Regional Provident Fund Commissioner. **…Respondent**

Mr.Kedar J..Patil with Ms.Gargi Joshi, for the Petitioner.

Mr.Suresh Kumar with Ms.Mohinee Chougule, for the Respondent.

C0RAM : G. S. KULKARNI, J.

DATE : SEPTEMBER 8, 2021

PC :

1. Challenge in this petition is to an order dated 17 February 2017 passed by the learned Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi, (for short '**the tribunal**') whereby the petitioner's appeal (ATA No.105(9)2017) along with the application for condonation of delay stands rejected. The petitioner had approached the Appellate Tribunal being aggrieved by an order dated 16 December 2015 passed by the Regional Provident Fund Commissioner, Regional Office, Pune, whereby the petitioner was directed to pay an amount of Rs.891622/- and Rs.353/- as damages together with interest, in

proceedings under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act,1952.

2. Section 7-I of the Act provides for a remedy of an appeal to the tribunal if a person is aggrieved by an order passed by the Regional Provident Fund Commissioner under Section 14B of the Act. Rule 7 of the Tribunal (Procedure) Rules, 1997 which provides for limitation in filing an appeal under Section 7-I, reads thus:

> **"7. Fee, time for filing appeal, deposit of amount due on filing appeal:**
>
> (1) .....
>
> (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 per cent 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."

3. Thus as per the Rule 7(2) (supra), an appeal is required to be filed within sixty days from the date of issuance of the order. Proviso to sub-rule (2) ordains that the tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal, within the prescribed period of 60 days, extend the said period by a

further fixed period of 60 days. The second proviso below sub-rule (2) provides 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% of the amount due from him as determined under Section 7A. The third proviso to sub-rule (2) provides that the tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under section 7-O.

4. In the present case, the Regional Provident Fund Commissioner passed an order dated 16 December 2015 observing that a period of sixty days from receipt of the order and an extended period of sixty days as provided for in Rule 7 (supra), only could have been condoned, on the petitioner's delay condonation application. The petitioner, in fact, filed the appeal on 15 February 2017 which was after a period of more than one year after the Commissioner passed the order on 16 December 2015. The tribunal accordingly dismissed the delay condonation application alongwith the appeal.

5. Mr.Suresh Kumar, learned Counsel for the respondents would submit that considering the period of delay, certainly the tribunal itself did not have jurisdiction to condone any delay beyond the extended period of sixty days as provided below the first proviso to sub-rule (2) of Rule 7. He submits that the said provision is a self operative inasmuch as any delay beyond the extended period of sixty days cannot

be condoned, and hence, according to him, the order passed by the tribunal did not warrant any interference. In support of his submission, Mr.Suresh Kumar has placed reliance on the decision of this Court in Writ Petition No.2101 OF 2014 (T**he Manganga Sahakari Sakhar Karkhana Ltd. vs. The Assistant Provident Fund Commissioner**), dated 5 November 2014. He submits that such judgment has interpreted sub-rule (2) of Rule 7 which holds that Appellate Tribunal can condone the delay, provided it is of a maximum period of 60 days. It is also held that the legislature specifically intended to exclude the power conferred under section 5 of the Limitation Act to condone delay or to extend the period of limitation beyond the period of 60 days.

6. It is thus clear that delay in the present case for the petitioner to approach the tribunal, was admittedly beyond the period of sixty days as provided in the second proviso to sub-rule (2) of Rule 7 of the Tribunal (Procedure) Rules, hence, the delay could not have been condoned.

7. In view of the clear position in law, the submission as urged by Mr.Patil that the matter be remanded and delay be condoned by this Court, cannot be accepted as this would be an exercise contrary to sub-rule (2) of Rule 7 of the Tribunal (Procedure) Rules. The petitioner cannot expect this Court to pass orders contrary to the statutory provisions.

8. For the above reasons, I find no merit in the petition. It is accordingly rejected.

9. Mr.Suresh Kumar at this stage submits that an amount of Rs.10,26,314/- has been deposited by the petitioner in this Court in pursuance of the order dated 30 April 2021, be permitted to be withdrawn by the EPF Authorities. Learned Counsel for petitioner does not have any objection. Accordingly, the respondents are permitted to withdraw the said amount and utilize the same in accordance with law.

(G. S. KULKARNI, J.)