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

***Date of decision: 10th September, 2021***

\+ **W.P.(C) 10026/2021 & CM APPL. 30940-41/2021**

M/S ARC SERVICES ..... Petitioner

Through: Mr. L.B. Rai, Mr. Kartik Rai, Ms. Disha Singh & Mr. Manish Vashisht, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Arti Bansal, Advocate for UOI. Mr. B.B. Pradhan, Advocate.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**<u>Prathiba M. Singh, J.</u> (Oral)**

1. This hearing has been done through video conferencing.

2. The present petition challenges the impugned order dated 9th August 2021 passed *ex-parte* by the Assistant Provident Fund Commissioner, Delhi *(hereinafter as 'APFC')* under Section 7Q of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (*hereinafter "Act"*) imposing a penalty of Rs.3,99,909/- on the Petitioner Firm.

3. The submission of Mr. L.B. Rai, ld. Counsel for Petitioner, is that the Petitioner was continuously appearing before the Authority. He submits that initially, the summons were received on 8th March, 2021 for hearing under Section 7Q of the Act, for belated remittance made during the period 14th September, 2014 to 29th February, 2020. Vide the said summons, the Petitioner was asked to appear before the Authority on 19th March, 2021. On 19th March, 2021, the Petitioner appeared before the Authority, and the case was adjourned to 30th March, 2021. On 30th March, 2021 and on 5th April,

2021, the Petitioner had appeared before the Authority. On 9th April, 2021, the matter was adjourned to 22nd April, 2021. However, on 22nd April, 2021, the Petitioner could not appear due to the outbreak of the second wave of the Covid-19 pandemic by then. However, the Petitioner had enquired and found out that the next date was fixed as 4th May, 2021. On 4th May, 2021, the Petitioner is stated to have logged in through the video-conferencing link at the specified time but no one appeared on behalf of the Authority. Vide e-mail dated 10th May, 2021, the Petitioner wrote to the Authority but no response was received. Further proceedings were held through video-conferencing on various dates, i.e., 7th July, 2021, 19th July, 2021 and 26th July, 2021, wherein the Petitioner duly appeared before the Authority. On 26th July, 2021, the matter was adjourned to 09th August, 2021. However, on 11th August, 2021, the Petitioner was sent the impugned order dated 9th August, 2021.

4. The grievance of the Petitioner is that the link for appearing through the video conference for 9th August, 2021 was not provided. The Petitioner had, in fact, written an email dated 10th August, 2021 stating this position and requesting the Authority to apprise him of the next date of hearing.

5. The above facts do not appear to be in dispute. Mr Pradhan however submits that the appeal against the order under Section 14B which was passed is pending before the CGIT. Accordingly, this matter also can be sent to the CGIT.

6. From the facts recorded above, the non-appearance of the Petitioner appears to have commenced around the outbreak of the second wave of the Covid-19 pandemic, and since the Petitioner had appeared regularly prior to

the said outbreak, this Court is of the opinion that the Petitioner ought to be given an opportunity to place its case before the APFC.

7. As per the judgment of the Supreme Court in ***M/s. Arcot Textiles Mills Ltd. v. The Regional Provident Fund Commissioner & Ors. [Civil Appeal No. 9488/2013 decided on 18th October, 2013],*** even an order under Section 7Q of the Act would have to be looked into by the Authority on issues such as computation, period for which interest is payable, etc. The Supreme Court has clearly held that an opportunity of hearing ought to be granted to the party concerned. The relevant extract reads:

> *"28. Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the Competent Authority."*

8. In order to send the matter to the CGIT, this Court would have to see whether the orders passed under Section 7Q and Section 14B are composite or not. The said order under Section 14B is not before this Court. This Court is clearly of the opinion that in cases of this nature, where merely due to non-availability of link or some communication related issue, parties cannot

be prejudiced. Accordingly, it is directed that the Petitioner would now be heard by the APFC, and a fresh order would be passed on merits, under Section 7Q of the Act after hearing the submissions and perusing the records. The impugned order dated 9th August, 2021 which was passed *ex parte* is set aside.

9. This Court has not examined the merits of this matter and has only given an opportunity to ensure that the Petitioner is heard before any orders are passed by the APFC. All contentions of both parties are left open.

10. With these observations, the petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**SEPTEMBER 10, 2021**
*dj/ad*