(2020) 11 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 8928 Of 2020, Civil Miscellaneous Application No. 28776, 28777 Of 2020

M/S Apra Auto India Private Limited — APPELLANT

Vs

Central Board Of Trustees Thr Regional Of Commissioner & Anr — RESPONDENT

Date of Decision : 11-11-2020

Acts Referred:

Employees Provident Fund & Miscellaneous Provisions Act, 1952 — Section 7A, 7I, 7O

Citation : (2020) 11 DEL CK 0090

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Raj Singh

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been held through video conferencing.

2. Advance copy of the appeal has been served upon the Respondents, however, there is no appearance for the Respondents.

3 The present writ petition has been filed challenging the order dated 16th March, 2020 by which the Petitioner's application for restoration of the appeal has been rejected by the Central Government Industrial Tribunal-cum-Labour Court, Delhi-2 (hereinafter, "CGIT").

4. The Petitioner had preferred an appeal under Section 7-I of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter, "EPF Act") challenging the order dated 13th October, 2016 passed by the Regional Provident Fund Commissioner (hereinafter, "RPFC") under Section 7-A of the EPF Act. The said appeal was heard upon admission on 6th April, 2017. After hearing the Petitioner, the following order was passed:

"1. Present appeal filed on behalf of appellant u/s 7-I of the EPF & MP Act, 1952 (the Act) challenging order dated 13.10.2016 (allegedly received on 04.01.2017 passed by respondent u/s 7-A of the Act. Alongwith appeal application for condonation of delay and u/s 7-O of the Act for waiver of pre-deposit also filed.

2. Heard at length

3. Considering submissions raised on behalf of counsel for appellant that copy of impugned order was supplied to the appellant on 04.01.2017 only and fact that present appeal is within extended period hence delay in filing of appeal condoned.

4. Admittedly respondent passed impugned order on the basis of balance sheet of appellant establishment. Along with appeal several Demand Pay Order and challan for depositing dues for the assessment period is also enclosed with case file. Considering all the facts of the case and manner of assessment of respondent, pre-deposit amount is waived. Now come upon 11.05.2017 for filing counter reply on behalf of respondent. Operation of impugned order stayed till further order"

5. Thereafter, it appears that the Employees Provident Fund Appellate Tribunal (hereinafter, "EPFAT") was merged with the CGITs and fresh notice was issued to the Petitioner. However, the said notice was not received and none was present on the next date i.e., 19th August, 2019. The appeal was dismissed in default on the said date. The Petitioner filed an application seeking restoration of the appeal on the ground that the notice was never received. The Petitioner pleaded that its earlier premises where the notice was sent was in fact sold and the office itself had been closed. The CGIT, however, rejected the restoration application vide the impugned order dated 16th March 2020. The CGIT has passed a general observation that all advocates and parties were well-aware of the merger of tribunals and shifting of its venue from Laxmi Nagar to Dwarka and then Rouse Avenue.

Thus, the CGIT holds that there is no ground for restoring the appeal.

6. Initially the appeal of the Petitioner was admitted with complete waiver of the pre-deposit amount, the appeal is clearly not devoid of merits. Considering the pandemic situation, the dismissal of the appeal due to non-appearance would cause enormous injustice to the Petitioner. Parties are entitled to be heard on merits unless there is a deliberate intention to delay or some malafide conduct that can be deciphered. In view of the fact that the ground on which the restoration was sought does not appear to be far-fetched, this Court is of the opinion that the appeal of the Petitioner deserves to be heard on merits. Accordingly, the impugned order dated 16th March, 2020 and the order dated 19th August, 2019 are set aside. The appeal before the CGIT is restored to its original number.

7. The appeal shall now be heard on merits and a speaking order shall be passed by the CGIT.

8. The petition is disposed of in the above terms. All pending applications are also disposed of.