



CWP-5816-2025

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

109

CWP-5816-2025

Date of Decision :04.03.2025

M/s Dilshad Enterprises, Nurmahal

...Petitioner

Versus

Employees Provident Fund Organization  
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Salathia, Advocate for the petitioner

\* \* \*

**Harsimran Singh Sethi, J. (Oral)**

1. In the present petition, challenge is to the order dated 03.02.2025 (Annexure P/1) by which, the appeal (Annexure P/5) filed by the petitioner against order passed under Section 7-A of the EPF & Miscellaneous Payment Act, 1952 dated 28.12.2021, has been dismissed by the Presiding Officer, CGIT-I, Chandigarh on the ground of it being barred by law of limitation.

2. Learned counsel for the petitioner firstly argues that the Tribunal has wrongly held that the appeal is not within limitation period prescribed despite of the fact that a specific averment has been made in the appeal that impugned order dated 28.12.2021 against which the appeal was preferred by the petitioner came to the knowledge of the petitioner only in the month of September, 2023 and immediately the copy of the order dated

**CWP-5816-2025****-2-**

28.12.2021 was applied for and after getting the certified copy of the said order which is sought to be challenged, an appeal was preferred by the petitioner against the said order within the prescribed limitation period hence, the decision of the Tribunal vide its order dated 03.02.2025 (Annexure P/1) that the appeal was barred by limitation is incorrect. Hence, it is the prayer of the petitioner that the order dated 03.02.2025 (Annexure P/1) be set aside with a further prayer that the statutory appeal (Annexure P/5) filed by the petitioner be heard and decided on merits.

2. The said argument has to be decided on the basis of the facts of this case, which now come on record, it may be noticed that while passing impugned order, the Tribunal has recorded a crucial fact that the impugned order passed by the Assessing Authority dated 28.12.2021 was sent to the appellant through a registered speed post on 28.12.2021. The said registered speed post was never returned back undelivered with objection that the same has not been delivered. Once, the order dated 28.12.2021 sought to be challenged in appeal dated 22.01.2024 (Annexure P/5) was sent to the petitioner through a registered post, it is considered as a deemed service upon the petitioner-appellant. The petitioner cannot claim that he did not have the knowledge about the impugned order dated 28.12.2021 and that the same was only gathered in September, 2023.

3. Learned counsel for the petitioner further argues that the said registered speed post was never received by the petitioner.

4. On being asked to point out that if any evidence has been brought on record in the appeal filed by the petitioner seeking condonation of delay on the ground that the registered post was never received by the

**CWP-5816-2025****-3-**

petitioner and if any such certificate stating the same has been issued by the postal authority qua the registered speed post in question, the details of which had been given, learned counsel for the petitioner submits that no such evidence was procured from the postal authority qua the delivery of the said registered speed post to the petitioner. In the absence of any such record being brought on record that the speed post dated 28.12.2021 was not received by the petitioner, then merely the oral argument of the learned counsel for the petitioner that the said registered speed post was never received by the petitioner cannot be accepted hence, the averments of the petitioner that the order sought to be impugned was not in the knowledge of the petitioner till September, 2023 cannot be accepted.

5. Further, in case the prescribed limitation period is taken to be starting from the date when the registered speed post was sent, the prescribed limitation period had already expired on the date when the certified copy of the order dated 28.12.2021 was applied for by the petitioner and hence, argument of the learned counsel for the petitioner that the Tribunal failed to notice that the appeal was within the prescribed limitation period keeping in view the certain facts alleged, cannot be accepted. On the face of it, keeping in view the provisions of the Limitation Act, 1963 as well as the provisions regarding limitation provided under Rule 7(2) of the EPF Appellate Tribunal (Procedural) Rules, 1997, the appeal preferred by the petitioner was time barred and has been rightly rejected on the said ground by the Tribunal.

6. Faced with this situation, learned counsel for the petitioner submits that even if, the Tribunal was bound by the Rules according to



CWP-5816-2025

-4-

which, the Tribunal could not have condoned the delay beyond 120 days, but the same can be done by this Court by exercising power under Articles 226 & 227 of the Constitution of India. Reliance is being placed upon the judgments in *Collector of Central Excise vs. M.M. Rubber Company, 1991 AIR (SC) 2141*, *M/s Car World vs. EPFAT and others, 2020 Lab LR 1061*; *M/s Murugaiyan Model Memorial High School vs. APFC 2020 Lab LR 1065*; *CWP-32626-2024 decided on 03.12.2024 titled as CBT Vs. M/s E-Meditech Insurance Ltd, and another;* *CWP-20059-2019 decided on 16.09.2023 titled as M/s Anand Rathi Commodities vs. State of Haryana and others;* *Government of Andhra Pradesh vs. P. Laxmi Devi 2008(4) SCC 720*, *CWP-17348 of 2024 titled as M/s Steel Kart vs. State of Haryana, decided on 07.08.2024;* *CWP-28451-2024 decided on 21.10.2024 titled as M/s Kore Voyage LLP vs. UOI, and M/s Tecnimont Pvt. Ltd vs. State of Punjab 2021 (12) SCC 477.*

7. Though, there is no dispute that this Court till has the power to condone the delay on the part of petitioner and direct the Tribunal to decide the issue on merit but whether the facts of the present case deserve to avail the said benefit from this Court needs to be looked into.

8. It may be noticed that despite show cause notice dated 24.11.2014 issued by the Assessing officer, the petitioner failed to approach the Assessing Authority to assist and present his case before the authorities concerned for the assessment of the EPF required to be deposited by the petitioner.

9. Learned counsel for the petitioner has conceded that the petitioner was proceeded ex-parte by the Assessing Officer.

**CWP-5816-2025****-5-**

10. The conduct of the petitioner is such that the petitioner was proceeded ex parte before the Assessing Officer and thereafter, still did not file an appeal against the said ex-parte order within time frame granted and it is only when the execution application was filed for the recovery of the penalty imposed, that the petitioner started exercising his remedies available though, under the law, no such remedy was available when the said efforts were made by the petitioner hence, the conduct of the petitioner is such that this Court will not like to exercise its discretion in favour of the petitioner so as to grant him benefit of condonation of delay so as to argue the appeal on merits as the rights to get the amount under Provident Fund Act which is to be paid to the employees only, had already been crystallized. The crystallized right can only be taken away in case, it is proved that despite due diligence, the petitioner failed to approach the Court or was prevented from exercising his right under the appeal, which fact is missing in the present case.

11. No other argument has been raised.

12. Present petition is dismissed.

**March 04, 2025***aarti***(HARSIMRAN SINGH SETHI)****JUDGE***Whether speaking/reasoned : Yes**Whether reportable : No*