

**BEFORE THE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR  
COURT-II, ROUSE AVENUE, DISTRICT COURT COMPLEX,  
DELHI.**

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

**ATA No. D-1/115/2019**

M/s. Vishakha Facility Management (Pvt.) Limited

Appellant

VS.

RPFC, Delhi (East)

Respondent

Present:- Sh. Ravi Ranjan, Ld. Counsel for the Appellant.  
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the application filed u/s 7L (2) of the EPF &MP Act by the petitioner who was the appellant of the appeal dismissed by order dt 06.10.2021 for non compliance of the order passed by the Hon'ble High Court of Delhi in WPC No 5630/2020. Notice of the petition being served on the Respondent Sh Rajesh Kumar appeared and participated in the hearing held on 11.1.22, when the counsel for both the parties advanced their oral submission. In addition to that the petitioner filed a written note of submission after serving copy of the same to the respondent and it has been taken on record.

The facts leading to the present application in short are that challenging the order dt 20.8.2019 u/s 7A and order dt 24.10.2019 u/7B by the RPFC Delhi, appeal was filed. This Tribunal by order dt 03.03.2020 directed the appellant to deposit Rs 3,40,41,872/- as pre deposit for admission of the appeal in compliance to the provisions of sec 7O of the Act within the time stipulated in the order. Being aggrieved the appellant filed WPC No5630/2020 and the Hon'ble court by order dt 9.9.2021 modified the order directing the appellant to deposit Rs 50,00,000/- within two weeks towards compliance of the provision of sec 7O of the Act and further directed for listing the matter before this Tribunal on 4.10.21. none appeared on 4.10.21 and the matter was listed on 6.10.21, when the appellant appeared through it's counsel and submitted that it is going through acute financial crisis and a huge amount payable to the appellant is lying with IHBAS and the later may be directed to deposit Rs 50,00,000/- as directed by the Hon'ble High Court. The plea was seriously opposed by the Respondent and same was not accepted by the Tribunal as well. As a result this Tribunal by order dt 6.10.21 dismissed the appeal for non compliance of the pre deposit condition as modified by the Hon'ble High Court.

Now the appellant as the petitioner has come up with the petition filed u/7L(2) of the Act read with Rule 21 of the Appellate Tribunal Rules seeking recall of the order dt 6.10.2021 by which the appeal was dismissed.

In the application and during the submission it has been stated that during the inquiry u/s 7A, Rs 1,02,60,370/- was found deposited by the appellant establishment for the inquiry period and considering the same the commissioner by the impugned order assessed Rs 9,72,71,063/- not only that the Respondent has recovered huge amount by attaching the accounts of the appellant in connection with other 7A inquiry and the period of inquiry of the former and later are overlapping. Hence, the Respondent be directed to deposit Rs 50,00,000/- out of the recovered amount towards compliance of the provision of sec 7O. He has filed photocopy of the order passed by this Tribunal in ATA No 1152(4)2015 to argue that such a direction was earlier given by the Tribunal.

The learned counsel for the Respondent opposed the petition mainly on two grounds i.e the petition filed is not maintainable in as much as no mistake apparent on the face of the record has been sought for correction. Further more the petition if allowed would have the effect of modifying the order of the Hon'ble court, which cannot be and should not be done by the Tribunal.

On hearing the argument it is understood that the appellant wants restoration of the appeal and direction to the Respondent to make the deposit in compliance of 7O. the same is not permissible as it would amount to modification of the order passed by the High Court. More over the provisions of sec 7L(2) is not applicable in the facts of the case in hand. The order passed in ATA 1152(4)2015 is distinguishable on facts as the said order was passed since a part of the assessed amount was found recovered before admission of the appeal and in this case the petitioner desires adjustment of the amount found deposited during the 7A inquiry towards compliance of 7O on the ground that there is a overlapping period. Hence, the grounds taken in the petition is held devoid of merit and the same is rejected.

(Presiding Officer)