

**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. 287(4) 2010**

M/s.Arpel Exports Pvt Ltd

Appellant

VS.

APFC, Delhi,

Respondent

**ORDER DATED:19/01/2022**

Present:- Shri S P Arora& Rajiv Arora, Ld. Counsel for the Appellant.

ShA.K.Verma, learned counsel for the Respondent.

This appeal challenges the orders passed by the APFC Delhi (South) on 28.6.2002 u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs13,67,188/- payable by the appellant establishment towards deficit P F dues of its employees for the period 3/95 to 6/2000 and the order dt 19.4.2010 u/s 7B of the ACT. The plea of the appellant taken in this appeal is that it was a small private Limited company and now a defunct establishment. It is covered under the provisions of the Act. Notice dated 05.06.2000 was issued to the establishment to appear and participate in the inquiry to be held 07.07.2000 u/s 7A of the Act, as it was noticed that there is deficit in deposit of PF dues for the aforesaid period.

The appellant establishment appeared and filed all the details of the deposit of PF contribution along with the copies of challans and Bank statements. The establishment was never proceeded ex parte for its non appearance. On the contrary, the APFC in a fanciful manner proceeded to decide the matter. The commissioner made a wrong and false observation in the impugned order that the establishment inspite of service of notice and liberal adjournments granted for production of

documents, failed to comply and as such the documents and materials placed on record were considered and it was found that the establishment has defaulted in remittance of PF contribution in respect of its employees for the aforesaid period. He computed the said dues up to Rs 13,67,188/-. In addition to that he also computed Rs3,25,125/- as penal interest payable by the establishment for the delay in remittance.

It has also been stated in this appeal that the said order passed u/s 7A was not communicated to the appellant establishment and they came to know about the same when recovery action was initiated. On its request the order passed u/s 7A was supplied and the establishment filed an application for review invoking the provision sec 7B. No order on that application was passed and communicated until the arrest warrant was issued against the appellant. Then only the office of the respondent supplied the copy of the order in which the application filed u/s 7B was rejected. The appellant, thus, in this appeal pleaded that the commissioner though had the complete details of the PF deposits made during the period March 1995 to October 2001; malfidely passed the order assessing a huge amount. Not only that the commissioner also computed penal interest for the said period separately and respondent initiated recovery proceeding and the appellant was harassed by issue of arrest warrant. To support the argument the details of the PF deposits made in respect of the inquiry period have been placed on record of the appeal. It is also pleaded that without identifying the beneficiaries and without assigning good reasons in support of his finding the impugned orders have been passed u/s 7A and 7B of the Act. Thereby the appellant has pleaded that the impugned order suffers from patent illegality and an outcome of improper appreciation of fact and law and liable to be set aside.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that the appellant has misled the Tribunal by filing some documents in support of the deposits made during the period for which inquiry was held. The Respondent has further pleaded that the challans filed by the appellant is for Rs 1,85,000/- only, whereas the assessment for the said period is huge i.e. Rs 16,92,313/-. It has also been pleaded by the Respondent that when the Recovery officer visited the Residence of the appellant for recovery of the dues, at that stage only, the appellant disclosed about the pendency of a petition u/s 7B.

While supporting the impugned order, it has been stated that the commissioner had given ample opportunity to the establishment showing deposit of the EPF dues. But the establishment did not comply and the order was passed basing upon the documents filed by the department.

During course of argument the learned counsel for the appellant by placing reliance in the case of Himachal Pradesh State Forest Corporation VS Assistant P F Commissioner, 2008-III LLJ SC 581 and in the case of Food Corporation of India VS RPFC, 1990LLR, 64, SC submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing attendance of witnesses and production of documents required for adjudication. Since identification of beneficiaries is a pre requisite for assessment u/s 7A of the Act, efforts should have been made for the same. But the commissioner acted illegally while making the assessment without identifying the beneficiaries. He also argued that the assessment made on the face of the amount deposited without identifying the beneficiaries goes to the root of the matter and makes order illegal and liable to be set aside. No rebuttal argument was advanced on behalf of the respondent.

The photocopies of the statement of the PF paid for the relevant period and a statement of the bank along with the challan copies have been placed on record being filed along with the appeal. The argument of the learned counsel for the respondent that the documents as directed were not produced during the inquiry is not accepted since the order of the commissioner speaks that whatever documents were filed by the establishment and department were perused.

It is not understood why the commissioner has not given any finding on the adequacy of the deposit made by the establishment. If at all he was of the opinion that the establishment is required to make more deposit, his order should have reflected the reason for the same including the basis of the calculation and the beneficiaries in respect of whom the deficient or no deposit was made. In absence of a finding to that effect the one and only conclusion is that the commissioner has passed the order without application of mind and without identifying the beneficiaries, which makes the impugned order not sustainable in the eye of law. It will not be out of place to observe that the EO while submitting his report of inquiry, had made least effort to identify the beneficiaries. Similarly the commissioner while discharging a quasi judicial function never summoned the salary or wage register to ascertain the beneficiaries. No explanation in this

regard has been offered by the Respondent. The law is well settled that assessment under EPF &MP Act can not be made as if the liability is at par with Tax. It is well settled that the EPFO is the custodian and Trustee of the subscribers and is duty bound to return the contribution to the subscribers. The purpose of the legislation is not to levy the amount as Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. Besides the view taken by the Hon'ble SC taken in the case of Himachal Pradesh State Forest Corporation referred supra, a similar view has also been taken by the Hon'ble High Court of Bombay in the case of CBT, EPFO VS M/S ShakambariGinning and Pressing Factory, Akola and Another ,2019 LLR,81.

In this case the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment and imposition of penal interest. The Hon'ble SC in the case of Kranti Associates Pvt Ltd vsShMasood Ahmed Khan and others, (2010)9 SCC 496, have held that

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of reason or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the same not sustainable in the eye of law and entails to be set aside. Hence ordered.

### **ORDER**

The appeal be and the same is allowed. The impugned order passed u/s 7Aof the EPF and MP Act is hereby set aside. Consign the record as per rules.

(Presiding Officer)