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-2/34/2022

M/s. Sanko Gosei JRG Automotive India Pvt. Ltd. Appellant

VS.

RPFC, Gurgaon Respondent

ORDER DATED :-07/11/2022

Present:- Shri S K Gupta, Ld. Counsel for the Appellant.

Shri S N Mahanta, Ld. Counsel for the Respondent.

The order deals with the admission of the appeal and the prayer made in the memo of appeal for an interim order of stay on the execution of the impugned order pending disposal of the appeal.The appeal challenges two separate orders dated 28/06/2022 passed by the RPFC Gurugram u/s 14B and 7Q of the EPF&MP Act communicated on 11/07/2022 and received by the appellant on18/07/2022, wherein the appellant has been directed to deposit Rs. 2,40,376/- and Rs. 2,24,736/- as damage and interest

respectively for delayed remittance of EPF dues of it's employees for the period 28/08/2015 to 14/09/2021.

Notice being served, the learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals, that the impugned orders were received by the establishment on 18/07/2022 and the appeal was filed on 12/09/2022, i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that when the notice of the inquiry was served, the AR of the establishment appeared before the commissioner and raised dispute with regard to the proposed amount of damage and interest as mentioned in the notice. A written submission was filed and the establishment requested for the details and manner of calculation of the proposed damage. But the said representation was not considered nor the calculation as demanded was supplied. On the contrary a non speaking order was passed in which there is no observation with regard to the objection raised or for imposing the damage at the highest rate as mentioned in the scheme, though the commissioner has the discretion of reducing the rate of damage. By placing the photo copy of the written submission made before the commissioner, he submitted that the order is illegal for non consideration of the submission and documents filed during the inquiry. It was also canvassed that the order passed u/s 7Q being on the basis of a common proceeding held, is appealable too.

The learned counsel for the Respondent, besides supporting the impugned order as a well discussed order advanced his argument on the legislative intention behind the beneficial legislation. He also pointed out that the establishment during the inquiry had agreed to deposit the interest amount. No dispute was raised with regard to the liability for damage. The other point argued in opposing the prayer for interim stay is that the establishment since admitted the delay and no mitigating circumstances were pleaded during the inquiry, the commissioner has rightly passed the order. As such, any order of stay on the impugned order will certainly defeat the very purpose of the legislation.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. The only factor which drove the commissioner for passing the impugned order is the non deposit in time.

On hearing the submission made by both the counsels the factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held

> "The order of the tribunal should say that the appellant has a primafacie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship."

In this case the period of default as seen from the impugned order spreads over almost six years and the damage levied is huge.

All these circumstances lead to the conclusion that if there would not be a stay on the execution of the impugned order passed u/s 14B of the Act, certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 30 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. Call the matter on 09.01.2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the next date.

Presiding Officer

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. 219(16)2015

M/s. Inductis (India) Pvt. Ltd. Appellant

VS.

APFC, Gurgaon Respondent

ORDER DATED :-07/11/2022

Present:- Shri Anil Bhatt & Sh. Kamal Kant Tyagi, Ld. Counsels for the Appellant.

Shri Abhishek Mishra, Ld. Counsel for the Respondent.

The appeal has been preferred u/s 7-I of the EPF and MP Act 1952(herein after referred to as the Act), challenging the order dated 26th December 2014, passed by the APFC, Gurugram, directing the appellant to deposit Rs.11,669/- towards the deficit EPF dues of it's employees, for the period April 2008 to October 2008.

The stand of the appellant, according to the narrative in the appeal memo in short is that, it is a Company engaged in the

business of a BPO, having it's establishment in Gurugram, and has been allotted a code no for compliance of the provisions of EPF & MP Act. The APFC by notice dated 14.11.2008, called the establishment to participate in the inquiry initiated u/s 7A of the EPF&MP Act, for assessment of the defaulted amount of PF dues of it's employees for the period April 2008 to October 2008. The inquiry was initiated on the basis of a report submitted by the EO. During the inquiry the establishment took a clear stand that the drivers engaged by a category of it's employees are their personal drivers and are paid directly by those employees from out of the driver allowance paid to them. The drivers never been employed for or in connection of the work of the appellant establishment, do not fall under the definition of employee as stated u/s 2(f) of the Act. But the commissioner was not persuaded by the stand taken and by order dated 09.02.2009, came to hold that the establishment is liable to pay contribution on the driver allowance paid to the employees. Challenging the said order, the appellant had preferred an appealbefore the EPFAT. The said Tribunal by order dated 14.06.2011, dismissed the appeal. Being aggrieved, the appellant had filed CWP No.14725/2009, before the High Court of Punjab & Haryana and the court while allowing the petition in part, directed for re hearing of the matter by the commissioner. During that fresh hearing, the appellant produced all relevant documents including the affidavit of the employees who were being paid the driver reimbursement allowances and pleaded that the same is not the part of the basic wage on which PF contribution is payable. But the commissioner never considered the submission and passed the impugned order. Describing the said order as illegal and arbitrary, the appellant has prayed for setting aside the same.

The respondent appeared through its counsel and filed written reply supporting the impugned order. The stand taken by the respondent in reply is that the APFC after considering all the material on record and being fully aware of the different provision of EPF and MP Act and scheme has passed the impugned order. It has further been stated that the appellant has intentionally

bifurcated the basic wage paid to the employees in to basic wage and driver reimbursement allowance, just to camouflage the basic wage and to avoid the P F liabilities. It has also been pleaded that the driver reimbursement allowance, so paid, is not the exempted allowance defined u/s 2(b) of the EPF Act and the same cannot be computed as described other than the basic wage to avoid PF liabilities. The respondent thereby submitted that APFC has rightly passed the impugned order directing the establishment to make contribution of PF dues on the driver reimbursement allowance, as a part of the basic wage paid to the employees.

Ld. Counsel for both the parties advanced detail argument in support of their respective stand.

On behalf of the appellant it was pointed out that the establishment has various categories of employees who are paid basic wage and allowances like house rent allowance. A particular category of employees are paid driver wage reimbursement which is a part of their perquisite and CTC agreed in the employment agreement. The employees do not contribute for the saidreimbursement under the EPF Act. except the basic wage and other allowances drawn by them. In response to the summon dated 19.07.2013, i.e. during the second round of inquiry, the authorized representative of the appellant appeared before the respondent with all documents and filed it's reply making a detail statement to the effect that no illegality has ben committed in the PF contribution of the employees and contribution is not payable on the driver wage reimbursement paid. The appellant/establishment pleaded and clarified before the APFC that for the said reimbursement paid, the appellant establishment had also paid Fringe Benefit Tax. During the period under inquiry, altogether 14 senior managerial cadre employees were paid the said reimbursement and those persons left the employment of the appellant after 11th April 2013. A request was made to summon those employees for the inquiry. But the commissioner did not summon them. Thus the appellant had filed

the affidavit of the said employees who had supported the stand of the appellant. But the commissioner, without considering the submissions went on to pass the unreasoned order directing the appellant to deposit Rs. 11,669/- for the period under inquiry. On behalf of the appellant the Ld. Counsel drew the attention of the tribunal to sec 2(b) of the Act which defines the Basic wage, which do not include

(i) House rent allowance
(ii) Over time allowance
(iii) Bonus
(iv) Any other similar allowance
(v) Any present by the employer.

But sec 6 of the Act provides on which payments provident Fund contribution are to be made and the same include basic wage, dearness allowance and retaining allowance, paid to each of the employees the Ld. Counsel for the appellant during course of argument submitted that the 14 employees who were senior cadre employees of the establishment were entitled to driver wage allowance as per the CTC and terms of employment. Since the allowance paid is subject to deduction of Income Tax, the employees had the option of claiming re imbursement of the same. The establishment never maintains records of the drivers engaged or the amount paid to them as wage since the said drivers in no way work under the supervision and control of the establishment as the cars they were driving was never supplied to the officers for the official use. He also argued that the commissioner fixed the liability without identifying the beneficiaries, which again makes the impugned order illegal. To support his argument, he placed 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 and** 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 taking steps for identification of the beneficiaries in spite of demand made by the appellant. Finding no other way the appellant had filed affidavit of the ex-employees, who were paid reimbursement and the said employees in the affidavit, made it clear that the drivers were engaged for their personal work and they were getting the re imbursement as a part of the perquisite as agreed in the employment agreement. But the commissioner never considered the same and never made effort to identify the beneficiaries. On the contrary, observed that it is the responsibility of the employer to identify the beneficiaries and deduct and deposit in their accounts. For observing in that line, the commissioner has wrongly interpreted the law.

From the impugned order it is noticed that the EO in his deposition before the commissioner submitted that the drivers engaged by the employees were for the official use of the said employees who have been provided with office cars. But the commissioner observed that this aspect stands un proved. Inspite of that, he observed that the driver reimbursement being paid in relation to the official work is liable for PF deduction.

The commissioner in his order under challenge has observed that the employer is liable to pay the PF contribution on the driver wage allowance/driver wage reimbursement, since the same is the wage paid to the drivers for the work in relation to the appellant establishment and was given a different name to avoid the liability under the Act.

Mr. Mishra, the learned counsel for the respondent while placing reliance in the case of **Basf India Ltd and Another vs. M Guruswami and Another, 2004 (101) FLR, 724,** decided by the Hon'ble HC of Bombay, submitted that the court in the said case

have observed in clear terms that the payment made by the Managers to such Drivers for the service rendered and reimbursed to the manager is in connection with the company's work and such attracts liability for PF deduction.

But I am not persuaded with the said argument advanced by the Respondent, since the case referred supra is distinguishable on fact from the one in hand. In the case of Basf India referred supra, the managers were provided with official car and the said managers were having the liberty of engaging the driver of choice and getting reimbursement of the remuneration paid to the driver. But in this case the 14 no of employees were getting the Driver wage allowance as a part of their CTC and the same was variable, depending upon the rank and length of service of the said employee. The amount so reimbursed was not the fixed and uniform amount to be paid to the drivers in a given time as wage. There is also no restriction that the employee concerned had to place proof of having a car or engaging the driver as a pre condition for getting the reimbursement. Hence the driver wage allowance/driver wage reimbursement paid to an employee is the wage paid to the drivers engaged in relation to the work of the establishment and makes it obligatory on the part of the employer to deduct PF contribution on the same.

The other aspect of challenge is with regard to non identification of the beneficiaries. The deduction in this case if were made, the same was required to be deposited in the account of the drivers as beneficiaries. It is the stand of the establishment that no record is maintained in respect of the drivers privately engaged by the managers and the establishment has no employer employee relationship with those drivers. This stand of the appellant finds support from the affidavits filed by the ex-employees drawing the reimbursement.

The law 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 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 Shakambari Ginnining and Pressing Factory, Akola and Another, 2019 LLR, 81**. Hence it is concluded that the impugned order has been passed by the commissioner, solely accepting the report of the EO and without identifying the beneficiaries. The finding of the commissioner considering the allowance as wage of the drivers and making assessment without identifying the beneficiaries is held illegal making the impugned order liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed on contest. The impugned order passed by the commissioner is here by setaside. Any amount deposited or recovered pursuant to the said order shall be refunded to the appellant by the Respondent without interest, within two months from the date of communication of this order. Consign the record as per Rules.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.

Appeal No. D-2/37/2022

M/s. Accuster Technology Pvt. Ltd. Appellant
Through Sh. Kamlesh Anand, Ld. Counsel for the Appellant

Vs.

RPFC-Gurugaon(W) Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 07/11/2022

Arguments on the application filed for condonation of delay as well as application filed u/s 7 O of the Act heard and concluded. List the matter on 21.11.2022 for pronouncement of order. Meanwhile, the Respondent authority is directed not to take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.

Appeal No. D-1/119/2019

M/s. Golden Edge Engineering Pvt. Ltd. Appellant
Through Sh. Akshay Sapre, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

ORDER DATED :- 07/11/2022

The Ld. Counsel for the Appellant requested for an adjournment citing that he is not prepared today to argue the matter. In the interest of justice, adjournment granted. List the matter on 16.01.2023 for final arguments.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.

Appeal No. D-2/08/2021

M/s. Artemis Medicare Services Ltd. Appellant
Through Sh. Vivek Kaushal, Ld. Counsel for the Appellant

Vs.

RPFC, Gurgaon Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 07/11/2022

The Ld. Counsel for the Appellant requested for an adjournment. Granted. List the matter on 16.01.2023 for final arguments.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.

Appeal No. D-1/17/2021

M/s. BSC-C & C 'JV', Appellant
Through None for the Appellant

Vs.

APFC, Gurugram(E) Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 07/11/2022

The Ld. Counsel for the Appellant has filed an application seeking adjournment on account of illness as he is suffering from fever. Adjournment granted. List the matter on 17.01.2023 for final arguments.

Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.

Appeal No. D-2/04/2020

M/s. BHP Infrastructure Pvt. Ltd. Appellant
Through Sh. Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 07/11/2022

The Ld. Counsel for the Appellant requested for an adjournment. Granted. List the matter on 16.01.2023 for final arguments.

Presiding Officer