

**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-2/23/2019

M/s. Strucon Engineers

Appellant

VS.

APFC, Gurgaon

Respondent

ORDER DATED :-12/10/2022

Present:- Shri Dileep, Ld. Counsel for the appellant.

Shri Chakradhar Panda, Ld. Counsel for the Respondent.

This appeal challenges the order passed by the APFC Gurugram on 29/07/2019 assessing Rs. 44,69,718/- u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act), payable by the appellant establishment towards deficit PF dues of it's employees for the period 04/2005 to 05/2010.

The plea of the appellant taken in this appeal is that it is an establishment set up in the year 2004. Since the date of establishment it was struggling with severe financial difficulties and ultimately closed its business in the year 2010. It had never applied for coverage under the Act or allotment of code No for remittance of the PF dues of its employees. When the appellant establishment was operating its business one Vikram Singh Yadav was its accountant and looking after all its account related matters. The said accountant was not a man of Trust and found involved in various illegal activities including obtaining of two PAN cards with different details and address. On detection of the same, police complaint was made by the appellant against him and he was removed from service too. The said accountant, behind the knowledge of the appellant had applied and obtained a PF code No for the appellant establishment w. e. f. 2005. The appellant came to know about the same when on account of a complaint made by the said ex- Accountant Mr. Yadav, the enforcement officer made an inquiry and on the basis of the report submitted by the EO, the APFC served notice dt11.02.2015 on the appellant calling upon to explain as to why it omitted remittance of the PF dues of its employees for the period 04/2005 to 12/2014. Without delay the AR of the establishment appeared and explained that it had never applied for the code no and more over for financial difficulties it has closed down its business since March 2010. Thus the period of inquiry was changed from 04.2005 to 05/2010. During the inquiry the AR of the establishment had produced all available documents like the salary Register, Bank statement, Balance Sheet and Form 11 of the employees. In addition to that the establishment had made a written submission denying its liabilities for the proposed assessment. But the commissioner never considered the oral submission, written submission and the document submitted during the inquiry and passed the impugned unreasonable and non speaking order assessing the PF Contribution payable by the appellant, which is illegal and not sustainable in the eye of law. By placing a copy of the written submission filed during the inquiry, the learned counsel submitted that a prayer was made to the commissioner to allow the

establishment for filing the affidavit of the employees who had submitted the Form 11. The commissioner neither called those employees in his own capacity nor allowed the appellant to file the affidavits. On the contrary, passed the impugned order without assigning reason in support of his finding and solely basing on the report of the EO.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that under the provisions of Para 30 of the EPF Act and Scheme, the appellant being the employer owes the responsibility of remitting the PF dues of the employees. The establishment had applied for code no in the year 2014 and the same was allotted by letter dated 13/09/2014 w. e. f. 01.04.2005. The squad of EPFO, as a routine procedure had visited the establishment and verified the documents. On detecting non remittance, the EO recommended for initiation of inquiry u/s 7A against appellant establishment from the period 04/2005 to 12/2015. On receipt of the notice of the said inquiry, the A/R of the establishment appeared and disputed the period of inquiry on the ground that it has closed the business since March 2015. The same was considered by the commissioner and the period of inquiry was revised. The appellant was regularly participating in the inquiry and also produced the un audited Balance Sheet, salary register and Form 11 submitted by the employees. All those documents and written submission of the establishment were considered by the commissioner, who did not accept the un audited Balance Sheet. He also rejected the Form 11 submitted by the establishment doubting authenticity of the same as those were the photocopies only, on which the signatures of the employer found missing. The commissioner considered the Bank Statement showing payment of salary to the employees by the appellant as the employer and on the basis of the same, assessment was done. He also added that during the inquiry, the

appellant had not disputed the eligibility of the employees for enrollment as subscribers. Thus the commissioner had rightly arrived at the conclusion with regard to the liability of the appellant for the omission on remittance of the PF dues. He thereby submitted that the impugned order does not suffer from any illegality for which the Tribunal can interfere with the same. The respondent has also pleaded about the legislative intention behind the beneficial legislation i.e the EPF&MP Act.

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 RPF, 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. In this case though the appellant establishment had made a prayer to the commissioner for an opportunity to file affidavit of persons who had submitted Form 11, no opportunity was allowed nor they were called as witnesses by the commissioner. He also argued that the salary register filed during the inquiry clearly shows that the establishment had no eligible employees during the period of inquiry. But the same was not considered at all.

The other argument advanced by the appellant is that the purpose of the legislation is not to levy the amount as if Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. In that view of the matter, the complainant and the employees who had submitted Form 11 should have been called during the inquiry. To support his argument the appellant has relied upon the view taken by

the Hon'ble SC in the case of Himachal Pradesh State Forest Corporation referred supra and a similar view taken by the Hon'ble High Court of Bombay in the case of **CBT, EPFO VS M/S Shakambari Ginning and Pressing Factory, Akola and Another**, 2019 LLR, 81.

In this case the impugned order clearly shows that all the records submitted by the appellant during the inquiry were considered by the commissioner. Though the complainant Mr. Yadav had appeared once during the inquiry, later on, could not appear for being away from NCR Delhi and requested for calling the Bank Transaction details. He also furnished the details of the Bank Account. The bank details were called and considered by the commissioner too. The commissioner doubted the authenticity of the Form 11 filed by the establishment, as those were found to be photocopies and not signed by the employer. The copy of the written submission filed before the commissioner during the inquiry has been placed on record. In the said submission the appellant had made all attempt of demolishing the credibility of the complainant describing him as a person without Trust, instead of explaining as to why the establishment is not liable for deposit of the amount assessed. The burden rests equally on the establishment participating in the inquiry to show as to who are the employees eligible or not eligible for the benefit as the records lie in the possession of the establishment. Furthermore there is no evidence to presume that the stand taken in this appeal were taken but never considered during the inquiry and it's request for filing of affidavits of the employees who had submitted Form 11 was ever denied. It was all ways open to the establishment to file evidence disputing the liabilities by filing the affidavits of the employees who had allegedly submitted the Form 11. Had those been produced, but not considered by the commissioner the same would have rendered the order challenged as illegal. Thus the submission made by the appellant and the stand taken in the appeal that opportunity of placing evidence was denied cannot be considered to level the impugned order as illegal.

Since the commissioner, during the inquiry considered the salary register and Bank Statements showing payment of salary to the eligible employees and found omission on the part of the employer in remittance of PF dues of the eligible employees, the assessment made on the basis of the said documents cannot be found with fault. From the pleadings and argument advanced, it is noticed that the appellant has disputed the allotment of code no on the ground that the same was obtained for the unauthorized action of the ex- Accountant .But the same is beyond acceptance since till date, no step has been taken by the appellant challenging the same. Thus in view of the discussion made above, the order passed by the commissioner is held to be a well discussed and well reasoned order and entails no interference and accordingly the appeal is held devoid of merit. Hence, ordered.

ORDER

The appeal be and the same is dismissed as without merit. The impugned order passed by the APFC is hereby confirmed. 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-2/31/2022

M/s SM Milkose Ltd.

Appellant

Through:- Shri Samir Sagar, Ld. Counsel for the Appellant.

Vs.

RPFC, Noida

Respondent

Through:- Shri S. N. Mahanta, Ld. counsel for the Respondent.

ORDER DATED :-12.10.2022

The Ld. Counsel for the Appellant gave an endorsement to withdraw the present case in the light of directions given by Hon'ble The Supreme Court of India in the present matter.

Accordingly, the present appeal stands dismissed as withdrawn.

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-2/18/2021

M/s Livedigital Marketing Solution Pvt. Ltd.

Appellant

Through:- None for the Appellant.

Vs.

APFC, Noida

Respondent

Through:- None for the Respondent.

ORDER DATED :-12.10.2022

The advocates being on strike, list the matter on 14.12.2022 for filing
reply.

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-2/01/2022

M/s. Tenneco Automotive

Appellant

Through:- Ms. Vaishnavi Chitneni, Ld. Counsel for the Appellant.

Vs.

RPFC, Gurugram

Respondent

Through:- Shri B.B. Pradhan, Ld. counsel for the Respondent.

ORDER DATED :-12.10.2022

Pleadings in the matter completed as reply to the appeal and rejoinder thereof stands submitted. List the matter on 13.12.2022 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-2/01/2022

M/s. Tenneco Automotive

Appellant

Through:- Ms. Vaishnavi Chitneni, Ld. Counsel for the Appellant.

Vs.

RPFC, Gurugram

Respondent

Through:- Shri B.B. Pradhan, Ld. counsel for the Respondent.

ORDER DATED :-12.10.2022

Pleadings in the matter completed as reply to the appeal and rejoinder thereof stands submitted. List the matter on 13.12.2022 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. 676(16)2013

M/s. Air France

Appellant

Through:- None for the Appellant.

Vs.

APFC, Gurugram

Respondent

Through:- Shri S. N. Mahanta, Ld. counsel for the Respondent.

ORDER DATED :-12.10.2022

As none is present on behalf the Appellant, list the matter on 14.12.2022 for filing reply to the application filed u/s 7L(2) by the Appellant and consideration of the same.

Presiding Officer