

**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-1/32/2018

M/s. Six Dee Telecom Solutions Pvt. Ltd.

Appellant

Vs.

APFC, Delhi(S)

Respondent

ORDER DATED :- 21/09/2022

The instant case was listed for pronouncement of order for which the arguments were heard on 05.08.2022. However, as the case pertains to the jurisdiction of CGIT-cum-LC no. I Delhi, and as the regular Presiding Officer has assumed the charge in CGIT-cum-LC no. I, let the matter be put up before him for further directions.

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. 400(4)2016

M/s. ASG & Co.

Appellant

VS.

APFC, Delhi (S)

Respondent

ORDER DATED:- 21/09/2022

Present:- Ms. Neetu Mishra, Ld. Counsels for the Appellant.
Shri Narender Kumar, Ld. Counsel for the respondent.

This order deals with an application filed by the appellant of the disposed of appeal, invoking the provision of law laid u/s 7L(2) of the EPF &MP Act, for review of the order dated 12/05/2022, passed by this Tribunal dismissing the Appeal and confirming the impugned order passed by the APFC, Dwarka New Delhi.

It has been stated in the petition that the Appeal was filed challenging the order passed by the commissioner u/s 14 B and 7Q of the EPF & MP Act on the ground that the inquiry was conducted for the default in timely remittance of the EPF contribution of the employees. But the commissioner while passing the impugned order did not assign any reason for imposition of the penal damage nor returned any finding on the mensrea of the establishment. Apart from that, several other grounds were also taken by the appellant challenging the legality of the impugned order. But this Tribunal while passing the final order omitted to consider the grounds taken in the appeal. The Tribunal also failed to interpret the law laid down by the Hon'ble High Court of Delhi in the case of **M/S System and Stamping vs. EPF AT& Others, 2008 LLR 485**. The written submission filed by the appellant on 09/05/2022 was not considered too while passing the final order in the appeal. Hence there being error apparent on the face of the record in as much as the final order passed in the appeal, the same be rectified by amending the order dt12/05/2022.

Copy of the petition was served on the Respondent's counsel who advanced his argument opposing the petition filed u/s 7L(2) of The Act.

The learned counsel for the petitioner/Appellant further submitted by drawing the attention of the tribunal to various judicial pronouncements including the case of Roma Henny and System and Stamping that this Tribunal while passing the final order had failed to appreciate the law laid down in the above said judgments which is an error on the face of the record. To buttress his argument he submitted that the scope of Review provided u/s 7L(2) is wide and by exercise

of power under that provision the Tribunal can rectify any mistake committed during adjudication.

In his reply the learned counsel for the opposite party/Respondent submitted that the scope of Review u/s 7L(2) is limited to correction of errors which is apparent on the face of the record. But in his petition the petitioner has raised many questions touching the merit of the appeal, which cannot be entertained. If it is so done, the same will have the effect of re hearing of the appeal on merit by the tribunal for review of it's own final order passed, which is not permissible under law. He thereby argued for rejection of the application. Reliance has been placed by the opposite party/Respondent in the case of **Food Corporation Of India ,Dirba vs RPFC,Bhatinda,decided by the Hon'ble High Court of Delhi in WPC5678/2013**, where in the Hon'ble court have held that the power of review can be exercised to rectify any factual mistake, calculation or error of like nature. The Tribunal, in the grab of this power cannot recall or reverse it's own order.

On hearing the submission advanced by the counsel for both the parties and perusal of the provision of sec 7L(2) it appears that the tribunal within a period of 5 years from the date of the order is empowered to rectify any mistake apparent from the record by amending the order passed. But the provision never empowers the Tribunal to rehear the matter on merit when some points are re canvassed after disposal of the appeal. In view of the stand taken by the petitioner/appellant in the petition, it is clear that the petitioner wants rehearing of the disposed of appeal, which is not permissible under the scope and ambit of law laid u/s 7L(2) of the Act.

Be it stated that the provision for rectification of an order, stems from the fundamental principle that justice is above everything, the power for review is an exercise to remove the error and not for disturbing the finality. In the present matter, the Review prayed for if would be allowed , the same will have the effect of the Tribunal hearing an appeal against it's own order, which is not permissible under the provisions of sec 7L(2) of the EPF&MP Act.

The petition for review, filed by the petitioner/appellant is held devoid of merit and rejected. Consign the record as per law.

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. D-2/23/2022

M/s. Polyplastic Automotive India Pvt. Ltd. Appellant

VS.

RPFC/APFC Gurugram west Respondent

ORDER DATED:- 20/09/2022

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

Shri B B Pradhan, Ld. Counsel for the respondent.

The appeal challenges the orders dated 17/01/2022 passed by the RPFC- Gurugram under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs. 2.06,296/-and Rs 1,70,074/- as damage and interest respectively, for

delayed remittance of EPF dues for the period 01/07/2017 to 15/09/2021.

The appeal having not been filed within the time prescribed under the Rule, the registry has reported about the delay. A separate petition has been filed for condonation of delay. In the memo of appeal, a prayer has been made for an interim stay on the impugned order pending disposal of the appeal on the grounds stated therein.

Being noticed the learned counsel for the Respondent appeared and participated in the hearing on admission of the appeal and condonation of delay as well as on the prayer for interim stay on the execution of the impugned order.

With regard to the delay it is found that the impugned order was passed on 17/01/2022 and the appeal was filed on 15/06/2022. Thus the learned counsel for the Respondent argued that the period of limitation which can be extended by the Tribunal up to 120 days has run out and the appeal be dismissed as barred by limitation.

The counter argument of the appellant is that the Hon'ble SC in the suo motto WPC No 3/2020 by order dated 10/01/2022 have excluded the period from 15/03/2020 to 28/02/202 for the period of limitation and have granted a further period of 90 days for filing of appeals and proceedings as against the prescribed period of limitation under the statute. Considering the submissions, the period of delay is hereby condoned. There being no other defect, the appeal is admitted.

The learned counsel for the appellant mainly canvassed two points for challenging the impugned order i.e the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner who proceeded to pass a nonspeaking order mechanically. Furthermore the commissioner has not given any finding on the mensrea of the appellant behind the delay in remittance. Though the commissioner was made aware of the situation that the delay in remittance is attributable to the financial crunch leading to closure of the business, the same was not considered at all by the commissioner. The other point raised by the appellant is that the basis of calculation of damage, though was made available to the appellant, no opportunity was given for verifying the related documents. Moreover the commissioner has not assigned any reason for imposing damage at the maximum percentage. He thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delayed remittance the impugned order is not sustainable in the eye of law and the appellant has a strong arguable case in this appeal. Unless the impugned orders levying damage and interest are stayed, serious prejudice would be caused to the appellant.

The appellant also argued that the commissioner has passed a composite order levying damage and interest by conducting a common proceeding. Hence the order passed u/s 7Q of the Act is appealable and need to be stayed till disposal of the appeal.

The Hon'ble SC in the case of **Arcot Textile Mills Ltd vs. RPFC decided in civil appeal no 9488/2013** have held that when two separate orders are passed/s 14B and 7Q of the Act, those are not composite orders and appeal challenging the order u/s 7Q is not maintainable.

On hearing the argument advanced by both the counsels and on a careful reading of the judgment of Arcot Textiles referred supra, it is found that the Hon'ble Apex court have clearly observed that when two separate orders are passed, those cannot be treated as composite orders.

For the argument advanced by the counsel for the appellant on the grounds of the appeal an order need to be passed on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied.

In this case the period of default as seen from the impugned order is for four years during which the beneficiaries were kept deprived of their rights. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order levying damage pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a condition for stay pending disposal of the appeal. It is hereby made clear that there would be no stay on the order passed u/s 7 Q of the Act as no opinion can be formed at this stage if the orders impugned are composite orders or not. Put up after three weeks i.e on 20.10.2022 for

compliance of the direction. There would be in interim stay till the next date on execution of the order.

Presiding Officer

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ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 771(16)2015

M/s. Lakhani Arman Shoes Pvt. Ltd.
Through Sh. Sanjay Kumar, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-Faridabad
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 20.09.2022

Although today the matter was listed for pronouncement of order, however, the Ld. Counsel for the Respondent prayed that any final order in this matter be only passed after considering some additional facts which he wants to submit in this case.

In all fairness, list the matter on 01.11.2022 for further consideration/ 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-2/02/2019

M/s. Brijlaxmi Paper Products Pvt. Ltd.
Through Sh. Deepak Jain, Ld. Counsel on behalf of Appellant

Appellant

Vs.

RPFC/ APFC-Faridabad
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 20.09.2022

Perusal of the record shows that no authority to appear before this court in respect of the Ld. Counsel for the Appellant appearing today, is available in the record. Accordingly, let the matter be listed on 01.11.2022 after filing proper authority by the Ld. Counsel for the Appellant.

Presiding Officer