

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM  
LABOUR COURT, DELHI**

**D-2/30/2024**

**M/s Sargam Exports Ltd. vs. APFC/RPFC, Gurugram East.**

Present: Sh. Prateek Tanwar, Ld. Counsel for the Appellant  
Sh. S.N. Mahanta, Id. counsel & Sh. Ved Prakash, A/R for Respondent.

**Order Dated-20.06.2025**

1. In the present appeal, a very short question is involved whether the overtime allowance/ payment which is specifically excluded from the purview of the basic wages can be included though it exceeded the limit for the purpose of contribution to the Provident Funds.
2. Appellant has assailed the order dated 23.02.2024 passed under Section 7 A of the **EPF & MP Act, 1952 (hereinafter referred as 'the Act')** stating that it is a registered establishment under the provisions of the Act and is engaged in readymade garment export. The orders are placed from the overseas buyer to manufacture the garments and export the same within the stipulated time. In response to the report dated 23.08.2019 prepared by Enforcement Officer (EO) of the respondent department for depositing the PF dues he had replied and submitted his reply on 11/10/2019. Even the EO report dated 10.01.2019, it was specifically mentioned that the appellant establishment failed to pay EPF and allied dues in respect of the overtime paid as under:-

Sr. No.	Financial Year	Overtime Amount (in Rs.)
1.	2012-13	7,16,470/-
2.	2013-14	43,47,756/-
3.	2014-15	53,03,377/-
4.	2015-16	45,62,413/-
5.	2016-17	32,93,679/-

3. It is pleaded on behalf of the appellant that the respondent has without application of mind taken wrong figures from the balance sheet and ledger provided by them to the EO. The EO of the department had wrongly took the figures from the head '**manufacturing expenses**' from the balance sheet and showed/ added the same into basic wages which are the overtime payments paid to the workers by the appellant, so total calculation done by the respondent authority is wrong and unjustified. He submits that impugned order suffers from legal infirmity, error and mistake in as much the same has been passed in imprudent manner ignoring the fact that the appellant establishment is giving prescribed minimum wages to each and every employee. It has neither fixed the lesser number of working hours to deprive the workers of the PF benefits nor has the company fixed the lesser wages for the normal working hours.

4. The impugned order is not sustainable in the eyes of law in view of the fact that it is settled law that no contribution is payable on overtime allowance as the said amount has been excluded from the definition of basic wages as stipulated **u/s 2(b) of the Act**. Impugned order is perverse and suffers from legal infirmity in as much the remuneration received by the employees for additional working hours does from the character of **over time allowance** by virtue of expression, "**Any similar allowance payable to the employee in respect of his employment or work done in such employment as engrafted in sub-clause (ii) of Clause (b) of Section 2 of the Act.**" Ld. counsel for the appellant submits that the appeal be allowed and the impugned order be set aside.

5. Respondent had filed the reply to this appeal. It has taken the preliminary objection at the same line as the respondent use to take in their other appeal stating that the Act is a legislation providing social security to the employees working in any scheduled industry or the appellant had not approached this tribunal with clean hands. It has also mentioned the preamble of the constitution stating that the EPFO is discharging the function of social and economic justice for workmen. On merit, the respondent has reiterated the fact that Sh. Lal Singh Meena visited the establishment for inspection and a report dated 19.01.2019 followed by a final report dated 23.08.2019 was submitted to the compliance cell of the respondent department. He had mentioned that overtime has been paid beyond the limit to the employees and the PF compliance was not done on excess amount of overtime. Reply to the EO report was submitted by the appellant establishment but the same was not found satisfactory and therefore, the impugned order was passed as the establishment failed to produce any material records or evidence relating to the approval/ permission of overtime from state labour department through general approval/ standing orders. He submitted that the present appeal be dismissed.

6. I have heard the arguments at bar, perused the record and gone through the provision in regard to the 'Basic wages' on which the appellant is liable to deduct the PF contribution. The basic wages has been defined at two places in the Act – one under section 2(b) and another under Section 6 of the Act. The same are quoted hereunder for ready reference:-

***2(b) "basic wages" means all emoluments which are earned by an employee while on duty or 3[ on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—***

***(i) the cash value of any food concession;***

***(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;***

***(iii) any presents made by the employer;***

***6. Contributions and matters which may be provided for in Schemes.— The contribution which shall be paid by the employer to the Fund shall be 6[ten per cent.] of the basic wages, [dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees 8[(whether employed by him directly or by or through a contractor)], and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding 6[ten per cent.]of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section]:***

***[Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words 6[ten per cent.], at both the places where they occur, the words 10[twelve per cent.]shall be substituted:]***

***Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.***

***[Explanation 1].—For the purposes of this 12[section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.***

***1[Explanation 2.—For the purposes of this 12[section], “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.]***

7. Section 2 (b) describe the meaning of basic wages as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him , but does not include –(i) cash value of any food concession (ii) any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar payable to the employee in respect of his employment or work done in such employment (iii) any presents made by the employer.

8. Entire case of the respondent stands upon the feet that the overtime expenses shown by the appellant is much more the limit prescribed and it has not sought the permission/approval from the state labour department for granting such excess overtime payment.

9. In this regard, it is important to mention here that the respondent authority has not cited any provision of law by which appellant is required to obtain the permission from State Labour Department. Even that it may be, it is the state labour department to initiate the action against the establishment. Respondent has no business to see the irregularity. Overtime expenses specifically excluded from the definition of the **Basic Wages u/s 2B of the EPF & MP Act, 1952** and the employer/appellant is not required to give any contribution of the PF on the overtime payment. Respondent is trying to re-write the law which he cannot. It is the legislature who in its wisdom has excluded the overtime allowances for the purpose of basic wages. Respondent authority has exceeded its power of taking the overtime allowance for paying the contribution of PF.

10. In view of the above, appeal stands allowed. Consequent thereto, the impugned order dated 23.02.2024 passed under Section 7 A of the Act is set aside and recalled. A copy of this order is sent to the Central Provident Fund Commissioner for information and action. Trial court record is returned forthwith. Record of this appeal is consigned to record room.

Sd/-  
Atul Kumar Garg  
(Presiding Officer)