

**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-1/12/2019

M/s. Netree E Services Pvt. Ltd.

Appellant

VS.

APFC, Delhi(S)

Respondent

ORDER DATED :-02/06/2022

Present:- Shri Arunav Patnaik, Ld. Counsel for the appellant.
Shri Naresh Gupta, 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 26/11/2018 passed by the APFC (Delhi South) directing the appellant to deposit the PF dues amounting to Rs. 6,49,317/- towards the deficit EPF dues paid for the period 09/2014 to 08/2016. In respect of it's employees.

The stand of the appellant according to the narrative in the appeal memo in short is that it is a Pvt. Ltd Company engaged in the business of providing Internet solution and has been allotted a code no for compliance of the provisions of EPF & MP Act. The APFC by summon dated 26.09.2016 called upon the establishment to participate in the inquiry for assessment of the defaulted amount of PF dues of it's employees. The inquiry was initiated on the basis of a report submitted by the EO. The appellant has various categories of employees who are paid basic wage and allowances like house rent allowance, conveyance allowance, and other allowances. The said allowances are paid to the employees to defray the expenditure incurred by them and the employees do not contribute under the EPF Act as the basic salary drawn by them is more than 15000/- .In response to the summon dated 26.09..2016, the authorized

representative of the appellant appeared before the respondent with all documents and filed its reply making a detail statement in defence. The enforcement officer also submitted his deposition highlighting 3 observations made in the report. The appellant/establishment pleaded and clarified before the APFC that the employees being excluded employees drawing the basic wage more than the ceiling fixed by the Act, the establishment is not liable for any deposit. But the commissioner, without considering the submissions went on to pass the unreasoned order directing the appellant to deposit 6,49,317/- towards EPF contribution of workers on the allowance paid to them during the period under inquiry. Being aggrieved the present appeal has been filed.

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 into various allowances and showed them paid to every one across the board to avoid the PF liabilities. It has also been pleaded that all the allowance paid are not the exempted allowance defined u/s 2(b) of the EPF Act and the same cannot be computed as the basic wage to keep the employees above the upper limit to treat them as excluded employees. The respondent thereby submitted that APFC has rightly passed the impugned order directing the establishment to make contribution of PF dues on the basic wage paid to the workers.

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

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 EO in his deposition before the commissioner submitted that EPF contribution has been avoided by showing that the allowances have been universally paid. It was further argued that the said allowances are meant to defray the expenditure, and the said allowance put them in the category of excluded employees. With that submission the learned counsel for the appellant argued that the commissioner without considering the stand taken by the appellant during inquiry and without giving any valid reason, passed the order deciding the liability of the appellant for contribution on the Allowances paid to the employees. While placing reliance in the case of **Bridge and Roof case vs. Union of India and others AIR 1963 SC 1474** and the case of **Manipal Academy of Higher Education vs. provident Fund Commissioner(2008) 5 SCC428** he submitted that the Hon'ble SC in the cases referred have clearly held that basic wage on a combined reading of sec 2(b) and sec 6 of the Act means the wage which is universally, necessarily and ordinarily paid to all across the board.in this case the allowances being universally paid is the basic wage and the employees since getting basic wage of more than 15000/- are the excluded employees.

Perusal of the impugned order shows that the inquiry on the basis of the EO report was held in respect of the excluded employees and the APFC after considering the submission of both the parties came to hold that the establishment intentionally added the allowances to basic wage to avoid the PF contribution. He accepted the report of the EO in toto. Thus the only and short question left to be answered in this order is 'if the allowance paid are required to be computed as basic wage for the purpose of EPF contribution.

Section 6 of the EPF&MP Act prescribes the components of salary/wage on which EPF contribution is required to be made and the proportion of the deposit by the employer and the employee. According to this provision, contribution is required to be made on basic wage, dearness allowance and retention allowance.it has been explained that the dearness allowance shall be deemed to include the cash value of the food concession given to the employees. Further Para 29 of the EPF scheme in the exact line of the law laid u/s 6 of the Act provides for contribution to be made proportionately at the rate of 10% on the basic pay, dearness allowance which includes cash value of food subsidy paid and retention allowance.

The commissioner in his order under challenge has observed that the employer is liable to pay the PF contribution on the basic wage of the employees. The impugned order does not contain any reason supporting the finding of the commissioner. The appellant has also relied upon the recent judgment of the Hon'ble SC in the case of **RPFC vs. Vivekanand Vidya Mandir (2020)17 SCC 515** wherein the Hon'ble SC while upholding the earlier view taken in the case of **Bridge and Roof and Manipal Higher Academy** referred supra have held that the allowances paid universally and across the board are to be treated as basic wage for computation of PF dues payable.

The learned counsel representing the respondent during course of his argument submitted that the establishment is required to make contribution on the entire basic pay, dearness allowance and retaining allowance of it's workers. No other allowance falls under the category of basic wage. More over the period of inquiry is from 09/2014 to 08/2016. The judgment in the case of Vivekananda Vidya Mandir was pronounced in the year 2020. Hence the appellant can not press the said judgment in to service to shield it's illegal act.

This stand of allowances being paid across the board was taken by the establishment before the commissioner and all documents in this regard were placed before him. But the commissioner, as seen from the impugned order did not accept the contention and rejected the same holding that the stand taken by the establishment lacks any force and there is hardly any point to reject the Report of the EO. He thereby concluded that the Allowance which are not covered by the exclusion clause given in sub Para (i) (ii) or (iii) of sec 2(b)of the Act can not be included in the basic pay.

On hearing the argument advanced by the parties it is found that the commissioner in his order has not assigned any reason for not accepting the submission with regard to universal payment of allowances to the employees. The commissioner has accepted the report of the EO in toto. The finding of the commissioner in this regard is found with fault as there is no mention as to why he came to a finding that the workman getting salary for more than 15000/- inclusive of the allowances are the excluded employees.

The objection raised by the Ld. Counsel for the respondent with regard to non applicability of the decision of Vivekanand Vidya Mandir referred supra need to be dealt in this order. The Ld. Counsel

for the respondent took a view that the judgment of Vivekanand Vidya Mandir cannot be applied to this case as the assessment with regard to a period much prior to the pronouncement of the said judgment. This argument of the Ld. Counsel is not accepted since, the view taken in the case of Vivekanand Vidya Mandir is not a new law pronounced but a harmonious interpretation of the provisions of section 2b of the EPF Act read with section 6 of the Act. Not only that the judgment of Vivekanand Vidya Mandir upheld the earlier views taken in the case of Manipal Higher Academy case referred supra. Moreover, the judgments pronounced by the apex court have the retrospective application except the closed transactions. This being an ongoing litigation the judgment of Vivekand Vidya Mandir very well applies to the facts of the case.

Hence, for the reasons recorded the impugned order passed by the commissioner is held to be illegal and liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is dismissed. The impugned order passed by the commissioner is hereby setaside.

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-1/23/2022

M/s. Walter Bushnell Life Care Pvt. Ltd. Appellant
Through Ms. Eccha Shukla, Ld. Counsel for the Appellant

Vs.

APFC-Delhi (C) Respondent
Through Sh. Manu Parashar, Ld. Counsel for the Respondent

ORDER DATED :- 02/06/2022

Order in this matter could not be pronounced. List the matter on
20.07.2022 for pronouncement of order. Interim order to continue till
next date.

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-1/27/2020

M/s.Ashiana Housing Ltd.
Through Sh.Sanjay Kumar, Ld. Counsel for the Appellant

Appellant

Vs.

CBT, RPFC, Delhi (South) & APFC-Delhi (S)
Through Sh.Naresh Gupta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

List the matter on 10.08.2022 for filing the rejoinder.

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-1/02/2022

M/s. Seven Seas Hospitality
Through Sh. Manish Malhotra, Ld. Counsel for the Appellant

Appellant

Vs.

CBT, APFC-Delhi (N)
Through Sh. S.C. Gupta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

The Ld. Counsel for the Respondent asked for some more time to file the reply. Granted as a last chance. List the matter on 28.07.2022 for filing the 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-1/14/2021

M/s. Cyber Media (India) Ltd. Appellant
Through Sh. Haribansh Manav, Ld. Counsel for the Appellant

Vs.

APFC-Delhi (S) Respondent
Through ShB.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 02/06/2022

Arguments on the miscellaneous application filed for vacation of stay heard and concluded and the following order is passed.

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal, the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent, by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

It has been stated in the petition that the Tribunal by order **dt 12.04.2021** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating, the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced."

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 21.07.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

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-1/20/2021

M/s.United News of India
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-Delhi (C)
Through ShB.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

Arguments on the miscellaneous application filed for vacation of stay heard and concluded and the following order is passed.

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal , the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent , by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

It has been stated in the petition that the Tribunal by order **dt 08.11.2021** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013)have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced ,may fix a date not beyond six months of the order of stay so that non expiry of the period of stay, proceeding can commence unless order of extension of stay is produced."

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six month. Hence an order to that effect need to be passed for clarity .

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the The Hon'ble SC , by their order dt 15th October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months , unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15th Oct 2020, leads to the only meaning that "A stay granted by any court" means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 25.08.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

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. 30(4)2012

M/s.Space
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

APFC-Delhi
Through Sh. Avnish Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

There is one application for correction in the name of the Respondent's counsel presented by Shri Avnish Singh, Advocate. The Ld. Counsel submitted that he is the representing counsel on behalf of the Respondent in this matter however, the presence of Respondent counsel has been marked as S.N. Mahanta, in the order dated 17.01.2022, 28.02.2022 and 02.03.2022.

Perused and it is order that the name Sh. S.N. Mahanta, wherever mentioned in the order dated 17.01.2022, 28.02.2022 and 02.03.2022 be read as Sh. Avnish Singh, Ld. Counsel for the Respondent. List the matter on already fixed date i.e. 14.07.2022.

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. 160(4)2016

M/s.Space
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

APFC-Delhi
Through Sh. Avnish Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

There is one application for correction in the name of the Respondent's counsel presented by Shri Avnish Singh, Advocate. The Ld. Counsel submitted that he is the representing counsel on behalf of the Respondent in this matter however, the presence of Respondent counsel has been marked as S.N. Mahanta, in the order dated 17.01.2022, 28.02.2022 and 02.03.2022.

Perused and it is order that the name Sh. S.N. Mahanta, wherever mentioned in the order dated 17.01.2022, 28.02.2022 and 02.03.2022 be read as Sh. Avnish Singh, Ld. Counsel for the Respondent. List the matter on already fixed date i.e. 14.07.2022.

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-1/46/2021

M/s. First Flight Couriers Appellant
Through Sh.Pradhyuman Bhagat, Ld. Counsel for the Appellant

Vs.

EPFO-Delhi (S) Respondent
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

&

Ms. Divya, Ld. Counsel for the applicant asking for impleadment as Resp. No.3

ORDER DATED :- 02/06/2022

The Ld. Counsel for the Appellant pressed his application for extension of time in reporting compliance of the order dated 07.04.2022 directing the appellant to deposit 40% of the assessed amount in compliance of the provisions of section 7 O of the Act. Heard. The time to report compliance is extended for a further period of 4 weeks from 07-July-2022. List the matter on 10.08.2022 for filing the compliance of order dated 07.04.2022. Interim orders to continue till next date of hearing.

Further, there is also one application for impleadment. Copy of the same stands served to the Ld. Counsel for Appellant as well as Respondent who wish to file written submissions on the same. Let the application be listed for consideration on the next date of hearing i.e. 10.08.2022.

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-2/11/2022

M/s. OPPO Mobile India Pvt. Ltd.

Appellant

VS.

APFC, Noida

Respondent

ORDER DATED :-02/06/2022

Present:- Shri Manish Pathak, Ld. Counsel for the appellant.
Shri S.N Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission and prayer made for condonation of delay and waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the appeal being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing without filing written objection. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 31/11/2021, and the appeal has been filed on 08/04/2022. Thus the office has pointed out that there is delay in filing of the appeal. No separate petition for condonation of delay has been filed.

The Hon'ble SC in suo motto WPC No 3/2020 by order dated 10/01/2022 have extended the period of limitation for all the cases ,appeals and proceedings to be filed, till 28/02/22 and for 90 days thereafter starting from 01/03/2022. Thus in view of the said order the appeal is held to have been filed within the period of limitation.

While advancing argument on the provision of sec 7O of the Act, the learned counsel for the appellant submitted, that the impugned order has been passed by the commissioner without considering the submission made in writing by the establishment, and solely basing on the report of the EO. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner took a wrong view of the matter and passed the order. The commissioner by show cause notice dated 19/10/2018 asked the establishment to produce all the records relating to the international workers engaged since the date of applicability of the provision. In response thereto all the records were produced including their salary register and how they are excluded employees. But the commissioner took a wrong view of the matter and held that the salary has been intentionally bifurcated to different allowances to avoid PF liability. The document produced on 13/02/2019 with regard to salary and Tax liability was never considered.

It has also been pleaded that the EO in his report made a calculation of the liability. But the basis of the said calculation was never made available during the inquiry. It was pointed out that the Respondent before expiry of the appeal period recovered the entire assessed amount from the Bank account of the appellant. Hence a direction be given for refund of the same pending disposal of the appeal.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also argued that all the grounds taken by the appellant shall be considered during final argument of the appeal. But the appellant has not made out any ground justifying waiver of pre deposit required u/s 7O of the Act. While conceding to the submission that the entire assessed amount has been recovered, he submitted that the said action was taken after expiry of the appeal period of sixty days.

A document which is the letter written to the Bank of the appellant by the respondent has been placed on record. This is direction given to the Bank on 24/02/2022, i.e after expiry of the appeal period. However an order need to be passed on the prayer made by the appellant for refund of the recovered amount. The appellant has placed reliance in the case of **Kulgaon Badalpur Nagar Parishadv vs RPFC and MangalKeshav Security Agency vs. APFC** where in the Hon'ble High Court of Bombay have taken a serious

view on the action of recovery before expiry of the period of limitation. But in the instant case the recovery action was initiated after expiry of the prescribed period of limitation. It is true that the Hon'ble SC have extended the period of limitation for filing of the appeal. But the same will not have the effect of stalling the activities to be carried out by the authorities under statute.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. The appellant in this case has not made out any convincing circumstances for waiver of pre deposit. Without going to the other detail pointed out by the appellant challenging the order as arbitrary and at this stage of admission, without making a roving inquiry on the merits of the appeal , it is felt proper to observe that the appellanthas a strong arguable case in this appeal. Hence considering the period of default, the amount assessed and the prevailing circumstances it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 40%. Since the entire assessed amount has been recovered by the EPFO, it is directed that the respondent shall refund the balance of the assessed amount to the appellant after depositing 40% of the same with this Tribunal by creating FDR in the name of the Registrar CGIT initially for one year with provision for auto renewal. The balance 60% of the assessed amount recovered by the respondent shall be refunded to the appellant by the respondent within 8 weeks from the date of this order without interest failing which the amount to be refunded shall carry interest @6% from the date of recovery and till the date of actual refund. This order is passed keeping in view the principle decided by the Hon'ble SC in the case of **MulchandYadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended. The appeal is thus admitted and it is directed that there would not be any recovery action on the basis of the impugned order till disposal of the appeal. List the matter on 04.08.2022 for compliance of the direction by the respondent and filing of reply. Both parties be informed accordingly.

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-2/18/2022

M/s. R.B Enterprises
Through Ms. Shivani Gole, , Ld. Counsel for the Appellant

Appellant

Vs.

CBT & EPFO Faridabad, Haryana
Through Sh. Satpal Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

Arguments on the admission as well as stay on operation of the impugned orders heard and concluded. List the matter on 04.08.2022 for pronouncement of order on the same. Meanwhile, the Respondent authority is directed not to take coercive measures for recovery of the amount as mentioned in the impugned orders 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-2/20/2022

M/s. R.B Enterprises
Through Ms. Shivani Gole, , Ld. Counsel for the Appellant

Appellant

Vs.

CBT & EPFO Faridabad, Haryana
Through Sh. Satpal Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

Arguments heard in part. The Ld. Counsel for the Respondent sought time to file written notes of arguments on the point of limitation. Granted. List the matter on 12.07.2022 for hearing on the point of limitation in filing the appeal.

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-2/26/2021

M/s.Convergys India Services Pvt. Ltd.
Through Ms. Meher Tandon, Ld. Counsel for the Appellant

Appellant

Vs.

RPFO-Gurugram
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/06/2022

The Ld. Counsel for the Respondent filed the reply to the main appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Respondent. List the matter on 10.08.2022 for filing the rejoinder by the Ld. Counsel for the Appellant.

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-2/04/2022

M/s. Universal Manpower Services Appellant
Through Sh.J.R. Sharma & Sh. Bhoopesh Sharma, , Ld. Counsel for the Appellant

Vs.

APFC, EPFO, Faridabad Respondent
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 02/06/2022

More time prayed for filing the reply by the Ld. Counsel for the Respondent. Granted. List the matter on 10.08.2022 for filing the reply by the Ld. Counsel for the Respondent.

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-2/03/2022

M/s.Supreme Human Resources Pvt. Ltd. Appellant
Through Sh.J.R. Sharma & Sh. Bhoopesh Sharma, , Ld. Counsel for the Appellant

Vs.

APFC, EPFO, Faridabad Respondent
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 02/06/2022

More time prayed for filing the reply by the Ld. Counsel for the Respondent. Granted. List the matter on 10.08.2022 for filing the reply by the Ld. Counsel for the Respondent.

Presiding Officer