

**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. 599(4)2011**

M/s. Kathuria Goods Carrier

Appellant

VS.

APFC, Delhi

Respondent

**ORDER DATED :-06/07/2022**

Present:- Ms. Akanksha Narang, Ld. Counsel for the appellant.

Shri A.K Verma, Ld. Counsel for the Respondent.

This appeal challenges the order dated 10/12/2010, passed by the APFC Delhi North u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs. 16,07,166/- payable by the appellant establishment towards deficit P F dues of its employees for the period 10/2002 to 11/2008. The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of transportation of Goods and materials. Notice dated 8/01/2004 was served on the establishment to appear and participate in the inquiry to be held 19/01/2004 u/s 7A of the Act as it was noticed that there is deficit in deposit of PF dues for the aforesaid period. On the said day and thereafter the authorized representative of the appellant establishment appeared and produced all the relevant documents relating to its employees and the deposits made under the schemes of the Act. It was pointed out that the establishment has already closed down its business and it had been very regular and diligent in making compliance of the statutory deposits. The Respondent having no evidence of default on the part of the appellant initiated the inquiry in respect of workers deployed for loading and unloading as casual workers on need basis and never in the pay roll of the establishment. The AR of the appellant establishment explicitly disputed the allegation of default or deficit in deposit. The AR also disputed the

coverage of the establishment since it had never engaged more than 19 employees. On account of that, the EO was deputed to inspect the establishment and submitted the report. On the same day, the relying upon the report of the EO the order was passed upholding the earlier order of coverage and the EO was directed to quantify the amount payable by the establishment. Thereafter the inquiry was held u/s 7A of the Act and the impugned order was passed. While passing the impugned order the commissioner had made least effort of identifying the beneficiaries since the business establishment of the appellant was closed before the inquiry held. Not only that the submission of the establishment that while in business it was making the statutory deposits regularly on actual basis and the amount so deposited were not considered at all. But for the workers engaged for loading and unloading, assessment was made as if they are the employees of the establishment and in its Pay Roll. Though the EO took a wrong view of the matter and came to an erroneous calculation that PF contribution is payable on the same the commissioner without application of mind accepted the same and proceeded to pass the impugned order. The establishment during the inquiry raised serious objection to the same and pointed out that the loaders are the free lance workers. Even then the commissioner found the appellant establishment liable for deposit of PF dues payable in respect of the casual workers engaged. The written submission of the establishment was not considered at all nor the basis of calculation was supplied. Over and above, without affording an opportunity to the establishment to dispute the EO report, on the same date of submission of the report closed the inquiry and passed the impugned order. Thus the appellant has pleaded that the commissioner by accepting the squad report in toto, passed the order without identifying the beneficiaries, which makes the impugned order illegal and liable to be set aside.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that the workers employed directly for loading and unloading are the employees of the establishment they are working for, and fall well within the definition of employee provided u/s 2(f) of the EPF Act. It has also been pleaded that the appellant establishment though took a stand of closure of its business since 2004, could not produce evidence to that effect. More over the EO submitted his report after verifying the employees' status and the wage paid for the period of inquiry. Hence there is no illegality in passing the order as disputed by the appellant. 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 RPFC, 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. 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 identifying the beneficiaries. She also argued that the organization was engaging loaders on need basis who are usually the local daily wagers. Hence there exists no employer and employee relationship between the appellant and the persons engaged are not the employees. No rebuttal argument was advanced on behalf of the respondent in this regard.

But the learned counsel for the respondent advanced argument that the establishment could not produce documents evidencing closure. The dispute raised with regard to the coverage was duly addressed by a separate order passed u/s 7A of the Act. Not only that the establishment also made deposit of contribution during the enquiry, admitting its liability. Hence no illegality has been committed by the commissioner while passing the impugned order.

The argument advanced by the appellant is with regard to non identification of the beneficiaries. On perusal of the impugned order it is seen that the inquiry was started pursuant to the notice dt 8<sup>th</sup> January 2004. The Authorized Representative of the establishment raised dispute with regard to the applicability and demanded withdrawal of the code no. on account of that the EO was deputed to verify the records. The EO submitted his report stating that the no of employees being more than 20, the establishment has been correctly covered. An order to that effect was passed u/s 7A of the Act. The appeal preferred u/s 7B by the appellant establishment was rejected. Thereafter another EO was deputed to quantify the deficit deposits payable by the establishment. As has been observed by the commissioner in the impugned order the said EO taking in to consideration the no of employees on the date of coverage quantified the amount payable and the commissioner by accepting the same proceeded to pass the impugned order. The EO while submitting his report of inquiry had made least effort to identify the beneficiaries. Similarly the commissioner while discharging a quasi judicial function never summoned the documents from the establishment to find out the names of the employees/beneficiaries. The order does not reveal that the report of the EO was supplied to the appellant giving him the opportunity of disputing the same. No explanation in this regard has been offered by the Respondent.

The law is well settled that assessment under EPF &MP Act can not be made as if the liability is the liability at par with Tax. It 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 assessment of the dues is made. Besides the view taken by the Hon'ble SC taken 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 Ginning and Pressing Factory, Akola and Another** ,2019 LLR,81.

In this case the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment made taking the no of workers engaged by the establishment on the date of it's coverage. The Hon'ble SC in the case of **Kranti Associates Pvt. Ltd vs. Sh. Masood Ahmed Khan and others, (2010)9 SCC 496**, have held that:-

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process, then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of reason or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons as the commissioner has only accepted the report of the EO for quantification of the dues payable, which makes the order not sustainable in the eye of law and entails to be set aside. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. The amount deposited by the appellant in compliance of the provision of sec 7O

shall be refunded to the appellant in due procedure. 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-1/111/2019**

M/s. Houte Couture (India)  
Through None Counsel for the Appellant

Appellant

Vs.

RPFC & APFC, Delhi (S)  
Through None for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

List the matter on 03.08.2022 for filing reply to 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-1/82/2019**

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

Appellant

Vs.

RPFC-1, Delhi (N)  
Through None for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

There is one request for adjournment filed on behalf of the Respondent. Adjournment granted. List the matter on 25.08.2022 for filing reply to 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-1/107/2019**

M/s. Ex-Man Raghav Security Services Pvt. Ltd. Appellant  
Through Sh. Rajiv Shukla & Sh.Sanjay Kumar, Ld. Counsels for the Appellant

Vs.

CBT,RPFC, Delhi (E) & 05 Ors. Respondent  
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant does not want to file the rejoinder. He also submitted that none of the Respondents other than EPFO have appeared in this case despite of serving a copy of the appeal upon them. Accordingly, Respondent no. 3, 4, 5, 6 and 7 are proceeded ex-parte. List the matter on 07.11.2022 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-1/34/2021**

M/s. State Council of Educational Research and Training Appellant  
Through Sh. Rajiv Shukla & Sh. Sanjay Kumar Ld. Counsels for the Appellant

Vs.

M/s.1. CBT through CPFC 2.APFC, Delhi East Respondent  
Through Sh. B.B Pradhan Ld. Counsel for the Respondent.

**ORDER DATED :- 06/07/2020**

The Ld. Counsel for the Appellant wants some more time to file the rejoinder. Granted. List the matter on 03.08.2022 for filing 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-1/28/2021**

M/s. Ranutrol Industries Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (E)  
Through Sh.Narender Kumar, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant has requested for an adjournment due to illness of his mother. Granted. List the matter on 03.08.2022 for filing 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-1/43/2018**

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

Vs.

CBT, RPFC-Delhi (N) Respondent  
Through None for the Respondent

**ORDER DATED :- 06/07/2022**

There is one request for adjournment filed on behalf of the Respondent. Adjournment granted. List the matter on 19.10.2022 for consideration of the stay application.

**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-2/19/2022**

M/s.Per Square Feet Real Estate Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant has requested for an adjournment due to illness of his mother. Granted. List the matter on 27.07.2022 for admission 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-2/21/2022**

M/s.Kinjal Enterprises Through Meenakshi  
Through None for the Appellant

Appellant

Vs.

APFC-Noida  
Through Sh. Narender Kumr, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant has requested for an adjournment due to illness of his mother. Granted. List the matter on 27.07.2022 for admission 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-2/13/2022**

M/s.AA Foundation for Safety Appellant  
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsels for the Appellant

Vs.

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

**ORDER DATED :- 06/07/2022**

Matter heard in part. List the matter again on 13.07.2022 for  
admission 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-2/03/2017**

M/s. Intelnet Global Services Pvt. Ltd.  
Through Sh.Soumitra Singhal, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant asked for some more time for filing the rejoinder. Granted. The Registry also submitted that the record of this Tribunal is still with Hon'ble Delhi High Court. Accordingly, it is directed to make necessary communication with the Hon'ble Delhi High Court requesting the record of this Tribunal. List the matter on 06.09.2022 for filing 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-2/03/2020**

M/s. Wear Well India Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

APFC,Noida  
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Appellant has requested for an adjournment due to illness of his mother. Granted. Reply is still to be filed by the Ld. Counsel for the Respondent. List the matter on 06.09.2022 for filing 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-2/23/2020**

M/s. Antony Road Transport Solutions Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

RPFC, Noida  
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 06/07/2022**

Reply on behalf of the Ld. Counsel for the Respondent stands filed.  
List the matter on 04.08.2022 for filing 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-2/08/2021**

M/s. Artemis Medicare Services Ltd. Appellant  
Through Ms. Muskan Kaushik & Sh. Vivek Kaushal, Ld. Counsels for the Appellant

Vs.

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

**ORDER DATED :- 06/07/2022**

Copy of the rejoinder stands filed. List the matter on 07.11.2022  
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-1/39/2018**

M/s. Planman HR Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 06/07/2022**

The Ld. Counsel for the Respondent pressed his application filed for early hearing along with a copy of the order dated 27.09.2021 passed by Hon'ble Delhi High Court in W.P.(C) No.78/2020 wherein directions have been issued to disposed of this matter within one year. Registry is directed to put up the file along with the record received from Hon'ble Delhi High Court on 25.07.2022.

**Presiding Officer**