

**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 :-12/05/2022

Present:- Ms. Nitu Mishra, Ld. Counsel for the appellant.

Shri Narender Kumar, Ld. Counsel for the Respondent.

This appeal challenges the composite orders passed by the APFC Delhi (south) on 14/03/2016 u/s 14B and 7Q of the EPF and MP Act 1952 (herein after referred to as the Act) levying damage and interest of Rs 9,14,047/-and Rs 6,17,989/-respectively on the appellant/establishment for the period August 2007 to October 2015.

The plea of the appellant taken in this appeal is that it is an establishment duly covered under the provisions of the Act. Since the date of it's coverage, the establishment is diligent in deposit of PF dues of it's employees including compliance of different provisions of the Act. Notice dt15th December 2015 along with statement showing belated deposit of PF dues proposing levy of damage and interest was served on the appellant for the above said period. In the said show cause notice the appellant was directed to appear before the respondent on19.01.2016. On the said day and thereafter the authorized representative of the appellant establishment appeared and raised dispute with regard to the method of calculation of the damage and interest and pointed out the anomalies and non consideration of certain challans showing deposit. Not only that during the inquiry various legal objections including the fact that the Respondent has initiated the inquiry belatedly was raised. The appellant had

categorically prayed for production of evidence in respect of the deposits made to deny the proposed damage. But the submission was never considered and the commissioner without considering the mitigating circumstances and without giving proper opportunity to the appellant for proving its bonafides for the default, abruptly closed the inquiry and passed the impugned order without application of mind. The Principle of Natural Justice were violated and the inquiry was hurriedly concluded. While pointing out various legal aspects and the position of law settled by the Apex Court and different High Courts, the appellant has pleaded that the impugned order is liable to be set aside on various legal grounds as has been stated in the appeal memo.

The counsel appearing on behalf of the respondent has filed a written reply objecting the stand taken by the appellant. Citing various judgments of the Hon'ble High Courts and the Apex Court he submitted that the provisions of EPF Act and the EPF Scheme do not provide any time limit for initiation of the inquiry. Thus the plea of the appellant is baseless and cannot be accepted. He also submitted that several adjournments were allowed to the appellant during the inquiry who was arguing for waiver of the damage on the ground that there was no delay in remittance of the PF dues. Subsequently the authorized representative of the establishment admitted the delay and the calculation of damage which is evident from the observation made by the commissioner in the order. Despite direction the appellant establishment could not produce the records showing deposit of the PF dues in time. Thus, the commissioner has passed a reasoned and speaking order.

The Ld. Counsel for the appellant during course of argument submitted that the APFC at the first instance initiated the inquiry after lapse of 8years which stands contrary to the circular issued by the EPFO. The mitigating circumstance explained during the inquiry and the objections taken were not at all considered and no finding has been rendered on the mensrea of the establishment behind the delayed remittance which in view of the judicial pronouncements makes the order illegal. He also argued that the commissioner has not assigned any reason as to why damage at the maximum rate was imposed when the commissioner has the discretion of reducing the same which is evident from the word "May" used in the section 14B of the Act.

In reply the Ld. Counsel for the respondent citing various judgments of the Hon'ble High Court of Gujarat submitted that when the legislature has made no provision for limitation it would not be open to the court or Tribunal to introduce any such limitation on the grounds of fairness or justice. He placed reliance in the case of

Hon'ble High court of Gujarat in **Gandhi Dham Spinning and manufacturing company limited vs. RPF and another (1987LabI.C 659GUJ)** to argue on the principles that causes prejudice on account of delay in initiation of a proceeding. In the said judgment it has been held that prejudice on account of delay could arise if it was proved that it was irretrievable. In the said judgment it has also been held that for the purpose of section 14B there is no period of limitation prescribed and that for any negligence on the part of the department in taking the proceeding the employees who are 3rd parties cannot suffer. The only question that would really survive is the one whether on the facts and circumstances of a given case the show cause notice issued after lapse of time can be said to be issued beyond reasonable time. The test whether lapse of time is reasonable or not will depend upon the further facts whether the employer in the mean time has changed his position to his detriment and is likely to be irretrievably prejudiced by the belated issuance of such a show cause notice.

In this case on behalf of the appellant a copy of the order passed u/s 7A of the Act against the establishment for the period 08/2007 to 11/2011 has been filed. The learned counsel submitted that the establishment being advised had deposited the entire assessed amount. Considering the same as admission the commissioner passed the impugned order of damage and interest without considering the mitigating circumstances and without returning a finding on the mensrea which makes the order illegal.

No document has been placed on record by the appellant pointing out the mitigating circumstances causing delay in deposit. No written objection showing such circumstances was ever produced before the commissioner. In the grounds taken in this appeal the circumstances leading to delay has not been explained. Merely a plea taken to that effect in the memo of appeal, will not act as a protective umbrella for the establishment against the liability for penal damage and interest. Admittedly there was an assessment of omitted deposits and the establishment had deposited the same without any appeal being preferred. In such a situation, it cannot be held that the impugned order of damage and interest has been passed by the commissioner without application of mind and in absence of good reasons.

Considering the facts of the present appeal in the light of the principle decided in the above mentioned case the stand of the

appellant that the impugned inquiry was barred by limitation seems not acceptable. The order seems to have been passed after due consideration of the materials and has not caused prejudice to the appellant. Hence, ordered.

ORDER

The appeal be and the same is dismissed on merit and the impugned order passed by the commissioner is confirmed. Consign the record as per Rule.

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-1/33/2022

M/s. Amar Detective & Consultancy Services Pvt. Ltd.
Through Sh. J.R Sharma, Ld. Counsel for the Appellant

Appellant

Vs.

APFC,
Through Sh.

Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

Arguments on the admission of the appeal heard and concluded.
List the matter on 20.07.2022 for pronouncement of order on the same.
Meanwhile, the Respondent authority is directed not to take any coercive
measure for recovery of the amount as mentioned in the impugned order
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-1/105/2019

M/s. Metro Tranist Pvt. Ltd.
Through Sh. Raj Kumar A/R for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

List the matter on 12.07.2022 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-1/25/2020

M/s. I.J.S Electronics
Through Sh. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. D.R Rao, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

The Ld. Counsel for the Respondent filed the reply to the appeal. Copy of the same stands supplied to the Ld. Counsel for the Appellant. The Ld. Counsel for the Appellant submitted that despite of the directions given by this Tribunal. The appellant has still not issued orders to deattach the bank account of the Appellant establishment. Furthermore, the Respondent authority has instructed to attach another bank account of the appellant establishment. The Ld. Counsel for the Respondent wants some time to seek instruction/clarification on the submission made by the Ld. Counsel for the Appellant. List the matter on tomorrow i.e. 13.05.2022 for submitting the clarification.

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-1/42/2021

M/s. Sinhal Metal Industries
Through Sh. Naresh Kumar, A/R for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

Reply to the appeal filed. List the matter on 12.07.2022 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-1/06/2022

M/s. Aqdas Maritime Agency Pvt. Ltd. Appellant
Through Sh. Rajiv Shukla & Sh. Sanjay Kumar Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 12/05/2022

List the matter again on 28.07.2022 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. 528(4)2015

M/s. Ved Enterprises Pvt. Ltd. Appellant
Through Sh. Raj Kumar & Ms. Komalpreet Kaur, A/R for the Appellant

Vs.

APFC, Delhi Respondent
Through Sh. Atul Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 12/05/2022

Arguments on the miscellaneous application filed by the Ld. Counsel for the Respondent heard 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.

Sh. Atul Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order dt 04.6.2015 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 .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention to the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Rajmata Vijayraje Sciendia Krishi Vishwavidyalaya VS EPFO, wherein the Hon’ble court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

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 12.07.2022 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-1/01/2022

M/s. Vibhor Marketing Pvt. Ltd.
Through Sh. Neha Shrivastav, Ld. Counsel for the Appellant

Appellant

Vs.

ABT, EPFO, Delhi (E)
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

The Ld. Counsel for the Appellant wants to file written reply to the miscellaneous application filed by the Ld. Counsel for the Respondent. List the matter on 12.07.2022 for consideration of the miscellaneous 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-1/02/2019

M/s. Bal Bhawan Public School Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (E) Respondent
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 12/05/2022

Final arguments in the matter heard at length and concluded. List
the matter on 28.07.2022 for pronouncement of order on the same.

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. 289(4)2015

M/s. Sinhal Metal Industries
Through Sh. Naresh Kumar, A/R for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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. 551(4)2015

M/s. Eagle Huntergers Solutions Ltd.
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Naresh Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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. 601(4)2015

M/s. Sanjeev Khurana
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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. 118(4)2017

M/s. Royal Brass House Pvt. Ltd. Appellant
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. Abhishek Singh, Ld. Counsel for the Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 11.07.2022.

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. 318(4)2017

M/s. Superwell Services
Through Sh. Raj Kumar, A/R for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

Matter heard in part. List the matter on 21.09.2022 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. 435(4)2016

M/s. Shree Balajee Enterprises
Through Sh. Raj Kumar , A/R for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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. 649(4)2016

M/s. Tristar Global Infrastructure
Through None for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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. 965(4)2016

M/s. Softage Information Technology Ltd.
Through Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh.

Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

Matter heard in part. List the matter on 28.07.2022 for
continuation of the 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-1/13/2017

M/s. Chawla Techno Construct Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. Prem Prakash, Ld. Counsel for the Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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-1/02/2018

M/s. Indian Red Cross Society Appellant
Through Sh. Mahender Singh A/R , Ld. Counsel for the Appellant

Vs.

APFC, Delhi (N) Respondent
Through None for the Respondent

ORDER DATED :- 12/05/2022

As no time left list the matter on 21.09.2022.

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-2/10/2022

M/s. Sandha & Co.

Appellant

VS.

RPFC-I, Gurgaon

Respondent

ORDER DATED :-12/05/2022

Present:- Shri J.R Sharma, Ld. Counsel for the appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the order dated 18.05.2021 passed by the RPFC Gurgaon u/s 14B of the EPF and MP ACT wherein the appellant has directed to deposit Rs. 1,15,08,030/- as damage for delayed remittance of the EPF dues of its employees for the period 13.06.2019 to 06.01.2021.

Notice being served the Ld. Counsel for the respondent appeared and participated in the hearing.

Perusal of the record and the office note of the registry reveal that impugned order was passed on 18.05.2021 and the appeal was filed on 22.03.2022 i.e beyond the period of limitation. A separate petition has been filed praying condonation of delay and admission of the appeal. Another prayer has been made for a direction to the respondent for not taking any coercive action against the appellant based upon the impugned order pending disposal of the appeal. Though registry has pointed out the delay in filing the appeal, for the extension of the limitation granted by the Hon'ble Supreme Court on account of the outbreak of COVID 19 the delay is condoned. There being no other defect the appeal is admitted.

The appellant has stated that the impugned order is illegal and arbitrary since, the complete calculation sheet of the proposed damage was never made available to the appellant. Enquiry was initiated during a period when all activities were under lockdown due to the outbreak of COVID. On account of the fact that the employees of the establishment were suffering from COVID, no proper defence could be set up against the showcause notice. No proper opportunity was also given for explaining the mitigating circumstances. The commissioner went on calculating the damage as if tax. The impugned order being a non speaking order and not based upon sound reasoning is liable to be set aside. Hence, the appellant has stated that it has a strong case to argue in the appeal.

In his reply the Ld. Counsel for the respondent submitted that the impugned order has been passed imposing damage for the delay in remittance with spans over almost 2 years for such delay the employees have been deprived of their lawful rights. The reply submissions made by the appellant is that the establishment should not have been saddled with the damage when none of its submissions were considered by the respondent and the order was passed in a mechanical manner.

During the course of argument the Ld. Counsel for the appellant brought to the notice of the tribunal that the impugned order was passed on 18.05.2021 and the appeal was filed on 22.03.2022. The respondent having knowledge about the appeal hurriedly initiated a recovery action and the bank account of the appellant was frozen. Finding no other way the appellant deposited the entire amount of damage through a draft on 24.03.2022. Citing the judgment of the Hon'ble High Court of Bombay in the case of **Kulgaon Badlapur Nagar Parishad vs. RPFC Thane WPC No. 4973 of 2021** he submitted that the Hon'ble High Court have taken a serious view of a situation for the recovery action taken before expiry of the period of limitation prescribed under the statute for filing of the appeal. He thereby submitted that the tribunal be pleased to give a direction to the respondent for refund of the balance amount after retaining the any amount which the tribunal deem proper to remain deposited as a pre condition for stay. But the Ld. Counsel for the respondent raised objection and submitted that the amount was never recovered but voluntarily deposited by the appellant. Hence, no order should be passed directing refund of any amount.

On hearing the counsel and on perusal of the record it is noticed that the recovery action was taken on the same day when the appeal was presented. Admittedly the appeal was presented after the expiry of period of limitation. In view of the same the respondent cannot be found with fault that the recovery was initiated before expiry of the period of limitation for filing the appeal. It is also evident from the record that the appellant had voluntarily deposited the draft in respect of the amount of damage assessed for defreezing of its bank account. In such a situation this tribunal doesn't feel it proper to issue any direction for return of any amount to the appellant. Since, the entire damage amount has been recovered there is no need of passing any interim order of stay.

Call the matter on 12/07/2022 for reply by 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-2/13/2022

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

Vs.

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

ORDER DATED :- 12/05/2022

List the matter again on 17.05.2022 for continuation of the
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-2/22/2021

M/s. Angels Infraheight Pvt. Ltd.
Through Sh. Ravi Ranjan, Ld. Counsel for the Appellant

Appellant

Vs.

CBT through, APFC-Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

List the matter on 28.07.2022 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-2/29/2021

M/s. Sonakshi Management
Through Sh. Ravi Ranjan, Ld. Counsel for the Appellant

Appellant

Vs.

CBT through, APFC, Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/05/2022

List the matter on 28.07.2022 for filing reply by the Ld. Counsel
for the Respondent.

Presiding Officer