

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL/EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, JABALPUR**

EPF Appeal No.- 55/2019

Present - P.K. Srivastava

H.J.S. (Retd.)

**M/s Pandey Tobacco Products
Through its Proprietor Ramavtar
Pandey, Tilakganj, Sagar
Madhya Pradesh-472002.**

Appellant

Vs.

**Assistant Provident Fund Commissioner,
Regional Office, 10, Civil Lines, Sagar,
Madhya Pradesh-470001**

Respondent

Shri Shailesh Mishra

:

सत्यमेव जयते

Learned Counsel for Appellant.

Shri J.K. Pillai

:

Learned Counsel for Respondent.

JUDGMENT

Under challenge in the present appeal is order of Respondent Authority dated 20/09/2019 by which, holding the Appellant Establishment coverable under Section 1 (3) (b) of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (in short the Act), the Appellant Establishment has been directed to deposit EPF's dues of these employees.

Facts connected are mainly that a notice was issued to the Appellant Establishment on the basis of report of Inspection Squad from the office of Respondent Authority whereby the Appellant Establishment was directed to appear before the

Respondent Authority with requisite records with respect to EPF deposits to its employees. It is the case of Appellant Establishment that they appeared in response to the notice and submitted the required documents for the period 2003 to 2004 and 2004 to 2005. The Appellant Establishment took the case that it had closed its witness since years and had surrendered its Excise Registration Certificate on 13/07/2009. A report was submitted by the Enforcement Officer under direction of the Respondent Authority on 02/07/2019 and it is on the basis of this report of Enforcement Officer, the Respondent Authority recorded the employment finding and passed the impugned order.

Grounds of Appeal taken in the memo of appeal are mainly that the impugned finding order is against law and fact, findings have been recorded proficiently without any evidence, the finding of the Respondent Authority that the Appellant Establishment employed more than 20 workers within and hence was covered under the act is passed on conjunctures and simonized, hence have no force of law.

The case of Respondent Authority, taken by them in the counter to the appeal is mainly that the act is a beneficial legislation, hence its provisions are required to be uninterrupted keeping in view the interest of the employees the findings have been recorded on the basis of evidence and they are correct in law and fact, they required no interference.

I have heard the argument of Mr. Shailesh Mishra Ld. Counsel for Appellant Establishment and Mr. J.K. Pillai Ld. Counsel for Respondent Authority. Appellant side has filed written arguments; also I have gone through the written arguments as well the records.

On perusal of the record in light of revealed arguments make it following point for determination in the appeal.

“Whether the finding of Respondent Authority that the Appellant Establishment is covered under the Act and is liable to deposit the EPF dues to its employees is correct in law and fact.”

The main argument of Ld. Counsel for Appellant Establishment is that the basis of finding is under challenge in the present appeal as the report of the Enforcement Officer reporting that there might be more than 20 employees working in their Establishment. Learned Counsel further submits that this report is not based on facts rather it is based on conjunctures and hence is perverse. The Respondent Authority has conducted error in law in blindly relying on this report as basis of his findings.

On the other hand, Ld. Counsel for Respondent Authority has attained the impugned order, we than argued that findings don't warrant any interference because they have been recorded correctly in law and fact.

A perusal of finding of report of the Enforcement Officer reveals that the Appellant Establishment was engaged in manufacture and distribution of Bidis. The records regarding purchase and distribution of Bidis were produced by the Appellant Establishment before the Enforcement Officer is also in the report. The report further stated that according to the records, the Appellant Establishment had only three employees though there were around 13 persons present in the office of Appellant Establishment at time of inspection by the Enforcement Officer. According to Appellant Establishment these were the Bidi purchasers and not the employees as it is mentioned in the report. The report further states that from records produced it came out that 5,46,000/- Bidis were prepared in 2005, January. The Enforcement Officer further refers to same report of Labour Bureau according to which for manufacture of One Lakh Bidis Hundred Employees are required on daily basis, hence the Enforcement Officer assumed that the Appellant Establishment had employed more than 20 persons with them. The Inspection Report itself states that the Attendance Register of the employees contained names of only four persons. The report does not identify any employees, it does not specify as to how many employees were actually engaged by the Appellant Establishment for their Establishment. The Appellant Establishment had

challenged this report of the Enforcement Officer before the Respondent Authority. Then it was incumbent on the Respondent Authority to ascertain the actual numbers of employees working with the Appellant Establishment and also have identified the beneficiaries. Record does not show nor does the impugned order show that these facts were ascertain for the Respondent Authority, hence the impugned findings and order is held perverse and against law and as well facts.

In the light of above discussion the appeal deserves to be allowed.

ORDER

Appeal is allowed. Order of Respondent Authority dated 20/09/2019 is set-aside. Respondent is directed to refund amount any deposited with it under Section 7(O) of the Act with interest at to domain within 30 days from the date of order, failing which interest @ of 10% from the date of order till payment.

Date:- 08/11/2024

P.K. Srivastava
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 08/11/2024

P.K. Srivastava
(Presiding Officer)