

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

CGIT-2/EPF Appeal No. 97 of 2019

M/s. Holcim Services (South Asia) Ltd. -Appellant

Vs

Regional Provident Fund Commissioner,

EPFO, Thane

-Respondent

ORDER

(Delivered on 25-06-2024)

M/s. Holcim Services (South Asia) Ltd / appellant has challenged the order dated 28-06-2019 passed u/s. 7-A (1) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [herein-after referred to as "the said Act"] and by this application prays for waiver from depositing the amount required under section 7-O of the said Act.

According to the appellant, while passing the order under challenge, the authority has fastened the Provident Fund contribution considering the house rent allowance as a basic wages in respect of International Workers that too ignoring the enacted legislation made under the said Act. It is submitted that as per the circular dated 25-05-2012 issued by the respondents, the components of the salary to be included for the purpose or computation of contribution are the same as in the case of domestic Indian employees, except that in case of International Workers wage ceiling is not applicable however



the same has been ignored as such the order under appeal is illegal. If the waiver is not granted, it will cause great prejudice to them.

As against this, respondents strongly objected for waiver from depositing 75% amount as required under Law. It is contended that, there was no cause of action for the appeal as such the present appeal filed by the appellant itself illegal. While passing the order under appeal, the authority has considered the stand taken by the appellant and contribution for International Workers was calculated @ of 12% per annum of the basic monthly wages. There is no illegality, no cogent reason for non-remittance for Provident Fund dues nor for waiver and ultimately prayed for rejection of the application.

I have given anxious consideration to the oral submissions advanced on behalf of the parties in the light of the copy of order under challenge. There appears no dispute that, the enquiry has been initiated against the appellant, in which the representative of the appellant participated. There seems no allegation regarding the violation of the procedure of Law therefore it cannot be said that, the enquiry initiated by the respondent was in violation of the procedure prescribed under Law.

Moreover, considering the point involved in the appeal regarding House Rent Allowance as basic wages in respect of International Workers is certainly arguable on merit. Similarly in M/s. A. K. Ahamed & Co. vs. The Employee Provident Fund Organization 2024 LLR 578 relied by the appellant it has been

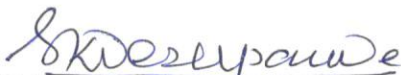


observed that, House Rent Allowance does not attract EPF Contribution being excluded from the purview of Section 6 of the Act and there is no obligation to pay contribution in respect of House Rent Allowance in such circumstances it can be said that, the applicant has made out a Prima-facie case and the balance of convenience lies in favour of the appellant.

As regards in waiver from depositing the amount in Court, I have observed earlier that, the appellant has made out a strong Prima-facie case and considering the amount involved in the order in the appeal, I am inclined to grant waiver in favour of the appellant and instead of 75%, I am directing the appellant to deposit 40% of the amount involved in the order in the appeal, instead of 75% as required under section 7-O of the said Act.

In the result, the appellant is directed to deposit the 40% of the amount involved in appeal in the Court within eight weeks from the date of this order.

Date: 25-06-2024


(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai