

**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-2/23/2019**

M/s. Strucon Engineers  
Through Sh. Dileep, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Gurugram  
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 07/04/2022

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. Chakardhar Panda, 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 **13.11.2019** 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 23<sup>rd</sup> 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 Gujurat 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 mis interpretation 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 15<sup>th</sup> October 2020 (Misc Application No 1577/2020 arising out of CrI 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 15<sup>th</sup> 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 15<sup>th</sup> 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 22.08.2022 which is the date already fixed in this matter.

**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-1/37/2019**

M/s. Rosmerta HSRP Ventures Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 07/04/2022

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. Manu Parashar, 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 15.05.2019** 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 Appex 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 23<sup>rd</sup> 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 Gujurat 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 15<sup>th</sup> October 2020 (Misc Application No 1577/2020 arising out of CrI 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 15<sup>th</sup> 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 15<sup>th</sup> 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 04.05.2022 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-1/28/2019**

M/s. Dayal Singh Library Trust Society  
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 07/04/2022

Although, the matter was listed for pronouncement of order on the miscellaneous petition filed for vacation of stay by Ld. Counsel for the Respondent but perusal of the file shows that order on the said application stands passed on 28.02.2022 vide which the said application was dismissed and case was posted for final arguments on 04.07.2022. Accordingly, list the matter on the date already fixed i.e. 04.07.2022 for final arguments.

**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-1/46/2021**

M/s. First Flight Couriers Ltd.

Appellant

VS.

APFC, Delhi (South)

Respondent

**ORDER DATED:-07/04/2022**

Present:- Shri Pradhyuman Bhagat, Ld. Counsel for the Appellant.

Shri B B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 70 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 petitions being served, learned counsel for the respondent appeared and participated in the hearing, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner 24/01/2020 and the appellant filed the appeal on 09.12.2021. The Registry, thus has reported that the same has been filed beyond the prescribed period of limitation. But the appellant has stated in the petition for condonation of delay that the impugned order was never communicated to the establishment and they come to know about the same once the Respondent initiated recovery action. During this recovery action the appellant establishment could procure the photocopy of the impugned order and immediately approached the EPF Tribunal in Mumbai as the head office of the establishment is located there and the recovery notice was issued by the RPFC, Mumbai and RPFC Ahmadabad. But the

CGIT Mumbai rejected the appeal for want of jurisdiction. The appellant has also stated that even otherwise the impugned order was passed on 24/01/2020 and the prescribed period of limitation would have run out against the appellant on 26/03/2020. But before that all activities were stopped for the lockdown declared by the Govt. on account of the outbreak of COVID 19. The Hon'ble SC considering the situation have extended the period of limitation and the appellant is entitled to the benefit and in that view of the matter the appeal is within the period of limitation.

The learned counsel for the Respondent though fairly conceded on the extension of limitation granted, objected that the appellant having business and office in Delhi had intentionally filed the appeal before the CGIT Mumbai to cause delay to the recovery action and the Tribunal should not condone the delay not properly explained, but considering the submission and the view expressed by the Hon'ble SC in the suo motto WPC 03/2020 and orders passed there in from time to time, it held to be a fit case for condonation of delay. Hence the appeal is held to have been filed within the period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the report of the EO alleging non compliance of the statutory deposits under the Act in respect of the employees for the period 01/2018 to 12/2018. But the same was later enlarged on the basis of some complaints received. Ultimately the assessment was made for the period 04/2015 to 03/2019. No proper opportunity was allowed to the establishment to set up the defence. The complainants raised objection with regard to non remittance of the EPF dues. But least effort was made by the commissioner to identify the beneficiaries and to find out their eligibility under the scheme. Not only that no opportunity was allowed to the appellant to confront the complainants with their allegation and the basis of calculation was never made available to the establishment for rebuttal. The establishment has closed down it's operation and business in Delhi w.e.f 28/02/2019 having no employee in Delhi to participate in the inquiry. Hence the ex parte order passed by the Respondent is illegal and liable to be set aside. Since the appellant has a strong prima facie case to argue in the appeal, insistence for compliance of pre deposit shall cause undue hardship as the amount assessed is too big. The appellant thereby pleaded for waiver of the condition laid down u/s 7O of the Act.

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 argued that during the period under inquiry, as observed by the commissioner more than 300 complainants had submitted their identity details and also furnished the other details to prove that the deduction made from their wage was retained by the employer for a pretty long period without deposit being made. The EO also visited the business premises of the appellant in Delhi and found employees working in two shifts a day. The stand of the appellant about closure of business is false. He also submitted that the closure of business will not exonerate the establishment of its liability. The learned counsel for the respondent also produced the LCR to add support to his submission.

Perusal of the LCR shows that the establishment had appeared on few dates during the inquiry, all possible steps including publication of notice in the local news paper were taken to ensure its attendance. The details of the complainants including their identity were verified by the EO, who had also visited the business premises on several occasions.

But at this stage of admission it is not desirable to make a roving inquiry on facts and merit of the finding of the commissioner when the pleading is yet to be completed.

Thus 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. Prima facie there is no dispute on the facts that the persons in respect of whom the establishment has not complied the PF contribution were working the establishment of the appellant. The period of inquiry spans over four years and amount assessed is huge. As per the version of the appellant it has closed down its business across India since 2019. The complainants are aggrieved for non deposit of the contribution deducted from their wage. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being otherwise utilized as the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be dealt in a manner to safeguard the interest of both the parties to a litigation.

In view of the said principle, and considering the grounds taken in the appeal, the period of default, and the amount assessed, 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%. Accordingly the appellant is directed to deposit 40% of the assessed amount within 8 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar CGIT initially for a period of one year with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. There would be an interim stay on the impugned order till the next date. Call the matter on 07/07/2022 for compliance of the direction. The Ld. Counsel for respondent request for the LCR to be returned. Allowed, with a direction to produce the same as and when directed.

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:- 1008(4)2016**

M/s. Venus Auto Product

Appellant

VS.

APFC, Delhi (North)

Respondent

**ORDER DATED:-07/04/2022**

Present:- Shri Manish Malhotra, Ld. Counsel for the Appellant.

None for the Respondent.

This order deals with an application filed by the appellant invoking the provision of law laid u/s 7L(2) of the EPF &MP Act, for review of the order dt10/05/2019 passed by this Tribunal dismissing the Appeal as not maintainable.

It has been stated in the petition that the Appeal was filed challenging the order passed by the commissioner u/s 14Band 7Q of the EPF & MP Act on the ground that the inquiry was conducted illegally and the commissioner passed the order. Apart from that, several other grounds were also taken by the appellant challenging the legality of the impugned order. On 16/12/2016, when the matter came up for hearing on admission, this Tribunal passed the order for hearing on condonation of delay at the first instance and keeping in view the objection taken by the appellant with regard to non service of the impugned order directed the Respondent for production of the complete lower court order. Though regular proceedings thereafter continued for some time, the same was discontinued thereafter on account of merger of the EPFAT with the CGIT in the year 2017. In order to eliminate the chance that a party may not know about the Merger this Tribunal started issuing fresh notice to all the litigants of

the appeal proceeding . Such a notice sent to the appellant returned unserved. As a result thereof the appellant remained ignorant of the status of the appeal filed by him. In July 2019, the appellant on receipt of a phone call for the first time came to know that the appeal has been dismissed and on inspection of the file came to know about the order dated 10/05/2019 by which the Tribunal took a wrong view that the appeal being filed against the notice and not against the final order passed u/s 14B and 7Q of the Act is not maintainable. Describing the said order as a mistake apparent on the record the present application has been filed.

No reply to the petition of the appellant filed. More over none appeared on behalf of the respondent to argue on the petition. Perusal of the record clearly shows that the appeal was filed challenging the orders passed u/s 14B and 7Q of the Act pursuant to which recovery notice was served. But this Tribunal in the order dated 10/05/2019 took a different view which is a mistake apparent on the face of the record and the earlier order dated 16/12/2016.

By placing reliance in the case of **Grindlays Bank Ltd. vs. Central Govt. Industrial Tribunal & Others, AIR 1981 SC 606**, he submitted that the error pointed out being a procedural and inadvertent error the Tribunal is empowered to rectify the same which would serve the ends of justice.

In the case of **Food Corporation Of India ,Dirba vs. RPFC, Bhatinda, decided by the Hon'ble High Court of Delhi in WPC5678/2013**, the Hon'ble court have held that the power of review can be exercised to rectify any factual mistake, calculation or error of like nature. The Tribunal, in the grab of this power can not recall or reverse it's own order.

On hearing the submission advanced by the counsel for both the parties and perusal of the provision of sec 7L(2) it appears that the tribunal within a period of 5 years from the date of the order is empowered to rectify any mistake apparent on the face of the record by amending the order passed.

Be it stated that the provision for rectification of an order, stems from the fundamental principle that justice is above everything, the power for review is an exercise to remove the error and not for

disturbing the finality. In the present matter the Review prayed for if would be allowed, the same will not touch upon the finality attained on merit. Hence in the circumstances of the present matter, an amendment of the order dated 10/05/2019 is permissible under the provisions of sec 7L(2) of the EPF&MP Act.

The petition filed by the appellant is thus allowed and the order dated 10/05/2019 is recalled and the appeal is restored to file. Call on 05/05/2022 for filing of reply by the respondent.

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-1/11/2022**

M/s. Walter Bushnell Medipure Pvt. Ltd.

Appellant

VS.

APFC, Delhi (Central)

Respondent

**ORDER DATED:-07/04/2022**

Present:- Shri Mareesh Pravir Sahay, Ld. Counsel for the Appellant.  
Shri Manu Parashar, Ld. Counsel for the Respondent.

The matter came up for admission of the appeal and the application filed u/s 7O of the Act. Heard, the Ld. Counsel for both the parties. During course of argument the Ld. Counsel for the appellant submitted that in the mean time the respondent by attaching the bank account of the appellant has recovered Rs. 5,00,000/- which is close to 40% of the assessed amount. The respondent has frozen the bank account of the appellant. He thereby submitted that the respondent may be directed to defreeze the account and not to take any other coercive action till the order on admission is passed. The Ld. Counsel for the respondent agreed that Rs. 500000/- has already been recovered from the account of the appellant. Considering the submission it is directed that as an interim measure the respondent shall not take any coercive action against the appellant till the next date when order shall be passed on the petition filed u/s 7O of the Act. The respondent is also directed to defreeze the bank account of the appellant if the same has been done in connection with the order under challenge. Call the matter on 25.05.2022 for orders on admission and application filed u/s 7O of the Act.

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-1/13/2022**

M/s. BSL Scaffolding Ltd.  
Through Sh. Amarjeet Singh, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 07/04/2022**

Arguments on the admission heard in part. The Ld. Counsel for the Appellant wants some more time to address the Tribunal on admission of the appeal. In all fairness, time granted. List the matter on 05.05.2022 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-1/105/2019**

M/s. Metro Transit Pvt. Ltd. Appellant  
Through Sh. Sanjay Kumar, Proxy Counsel for the Appellant

Vs.

RPFC, Delhi(N) Respondent  
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent  
None for the Applicant

**ORDER DATED :- 07/04/2022**

As nobody pressed the application filed for impleadment as a party to this present appeal and perusal of the impugned order shows that the Applicant herein were not the parties before the Respondent Authorities. Accordingly, application for impleadment stands dismissed as not pressed. The Respondent has already filed the reply in this matter. Cop of the same supply to the Proxy Counsel appearing for the Appellant. List the matter on 12.05.2022 for filing rejoinder by the Appellant.

**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-1/25/2020**

M/s. I.J.S Electronics

Appellant

VS.

APFC, Delhi (East)

Respondent

**ORDER DATED:-07/04/2022**

Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.  
Shri D.R. Rao, Ld. Counsel for the Respondent.

The matter came up today on account of a miscellaneous application filed by the appellant praying therein that for some inadvertent mistake in the order passed on 31.03.2022 no order has been passed granting interim protection till the matter is decided and the appellant be allowed to retain the FDR and the lien created on the same be removed and the appellants bank account in ICICI Bank and Punjab and Sindh Bank be defreezed. Copy of the petition was served on the Ld. Counsel for the respondent who being present participated in the hearing.

On hearing the submission it appeared that the matter was heard on 31.03.2022 in part and adjourned to 27.04.2022 for production of document by the appellant and LCR by the respondent. The Ld. Counsel for the appellant submitted that certain important facts were brought to the notice of the tribunal on that day but no order on the same has been passed. From the submission made by the counsel for the appellant it is seen that pursuant to the order passed by the Hon'ble High Court in WPC NO. 2147 of 2020 one FDR for Rs. 22,92,676/- was prepared and retained by the appellant. But the respondent has created a lien over that and at the same time it has freezed the bank accounts of the appellant maintained with the ICICI Bank and Punjab and Sindh Bank. She thus, prayed for a direction to the respondent for defreezing the account.

Considering the fact that in respect of the entire amount assessed u/s 14B and 7Q of the Act which is the subject matter of the appeal, one FD has been created by the appellant and a lien has been created by the respondent. The appeal filed by the appellant since doesn't suffer from any other defect, the appeal is admitted. The respondent is directed not to take any coercive action against the appellant in respect of orders challenged in the appeal. It is further

directed that the respondent shall defreeze the bank account of the appellant bearing no. 07160500046 maintained with ICICI Bank and account No. 03881600050074 maintained with Punjab and Sindh Bank forthwith. The other prayer of the appellant for lifting of the lien on the FDR created by the respondent is not allowed. This order shall remain in force till final disposal of the appeal. Call the matter on 12/05/2022 for filing of 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. 1071(4)2015**

M/s. Educomp Solution Ltd. Appellant  
Through Sh. Richik Harikant Ld.Counsel the Appellant (Vakalatnama filed)  
Vs.

RPFC, Delhi(N) Respondent  
Through Sh. Sanjay Aggarwal, Ld. Counsel for the Respondent

**ORDER DATED :- 07/04/2022**

The Ld. Counsel for the Appellant requested some time to address the court. Granted. List the matter on 02/06/2022 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. 738(4)2014**

M/s. Educomp Solution Ltd. Appellant  
Through Sh. Richik Harikant Ld.Counsel the Appellant (Vakalatnama filed)

Vs.

RPFC, Delhi(N) Respondent  
Through Sh. Sanjay Aggarwal, Ld. Counsel for the Respondent

**ORDER DATED :- 07/04/2022**

The Ld. Counsel for the Appellant requested some time to address the court. Granted. List the matter on 02/06/2022 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-1/41/2021**

M/s. Sinhal Metal Industries  
Through Sh. Satender Verma, for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 07/04/2022**

The time to comply with the order dated 17.01.2022 of this Tribunal is extended till 15.04.2022 on the request made by Ld. Counsel for the Appellant. Interim orders continue till then.

**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. Satender Verma, for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 07/04/2022**

Compliance done. The appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 12.02.2022 for filing reply by the Ld. Counsel for the Respondent

**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-2/09/2022**

M/s. Xcelserv Solution Pvt. Ltd.

Appellant

VS.

RPFC, Gurugram

Respondent

**ORDER DATED:-07/04/2022**

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.  
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing of the appeal for a reason stated in the petition.

Copy of the petition being served on the respondent Ld. Counsel Shri Rajesh Kumar appeared and participated in the hearing.

Perusal of the office note shows that the impugned order u/s 7A was passed on 22.07.2021 and the appeal was filed on 28.02.2022. Though, the appeal has been filed beyond the period of prescribed period of 60 days, the same is held to be filed in time for the extension of limitation granted by the Supreme Court in suo moto WPC NO. 03/2020.

In the impugned order the appellant has directed to deposit 3487553/- as the deficit PF contribution of its employees for the period 03/2017 to 06/2019. Being aggrieved the appellant by filing the appeal has stated that a showcause notice dated 06.09.2017 was served on the establishment alleging split up of the minimum wage paid into various allowances other than the basic wage. Thus, it was alleged that the appellant establishment has intentionally bifurcated the basic wage to avoid the PF Liability. The further stand of the appellant is that it is a Private Limited Company and being covered under the provisions of EPF Act is very diligent in compliance of the PF liabilities. The salary is being paid as cost to company and the allowances paid are to be excluded from the basic wage. These special allowances are not paid uniformly to all the employees across the board. The enforcement officer took a wrong view of a matter and made a report suggesting inquiry and recovery of the deficit PF contribution even though all the relevant documents like salary register, etc were produced. On being served with the report of the EO

though the establishment had filed a rebuttal before the commissioner the same was not considered and the commissioner in a whimsical manner and without assigning reason for his finding, without summoning the persons in respect of whom compliance was omitted and without identifying the beneficiaries passed the impugned order. Thus, the appellant has stated that the impugned order suffers from patent illegality and liable to be set aside. He thereby submitted that insistence for deposit of 75% of the assessed amount when the appellant has a fair chance of success would definitely cause undue hardship. He thereby prayed for waiver of the pre condition of deposit for admission of the appeal.

In reply the Ld. Counsel for the respondent made his submission supporting the impugned order as a reasoned order and pointed out the very purpose of the beneficial legislation and insisted for compliance of the provisions of section 70 by depositing 75% of the assessed amount. He also submitted that waiver of the condition should not be made in a routine manner as it will have the effect of defeating the very purpose of the legislation.

The commissioner in this case has made the assessment as if tax without paying least consideration to the submissions and without identifying the beneficiaries. Considering the submission advanced by the counsel for both the parties and order need to be passed on the compliance/waiver of the condition laid u/s 70 of the Act. There is no dispute that the employees have been paid various allowances forming part of their gross salary. At this stage without forming any opinion on the same and without making a roving inquiry on the merit of the appeal it is felt proper to pass an order on the prayer for waiver of the condition laid u/s 70 of the Act. The amount assessed in this case is big and the appellant has strenuously argued about the merit of the appeal. Considering the same it is felt that insistence for deposit of 75% of the assessed amount will cause undue hardship to the appellant. But at the same time it is held that the circumstances do not justify total waiver of the condition laid u/s 70 of the Act. Thus, while disposing the application filed u/s 70 of the Act it is directed that appellant shall deposit 30% of the assessed amount within 6 weeks from the date of communication of the order for admission of the appeal. On admission of the appeal there would be an interim stay on the execution of the order till final disposal of the appeal. The interim protection granted earlier shall continue till the next date. It is made clear that the appellant if would fail to comply the direction the appeal shall be dismissed without further reference. Call on 25.05.2022 for compliance of the direction.

Presiding Officer