

**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. 736(4)2014

M/s. Uniforge Bearing Co. Pvt. Ltd.

Appellant

VS.

RPFC, Delhi

Respondent

ORDER DATED:- 17/08/2022

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.
Shri A.K Verma, Ld. Counsel for the Respondent No.1.
Shri Madhukar Verma, Ld. Counsel for the Respondent No.2

This appeal challenges the orders passed by the RPFC Delhi South on 23/06/2014 assessing Rs 9,20,682/-u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act), payable by the appellant establishment towards deficit PF dues of it's employees for the 02/2000 to 04/2003. The plea of the appellant taken in this appeal is that it is a Pvt. Ltd Company engaged in the business of manufacturing of ball bearing which is a capital intensive process. During the period under inquiry, the establishment had never engaged more than 10-15 employees. However all the persons so engaged were extended the benefit under the PF Act and the

appellant as the employer was regularly making deposit of the PF contribution of those employees on their basic wage excluding the HRA and conveyance allowance paid.

In the year 2003, thirteen (13) numbers of the ex- employees of the establishment made a complaint to the respondent regarding denial of PF benefits to them. Thus on 11.06.2003, a notice of inquiry u/s 7A was served on the establishment. The appellant establishment appeared before the commissioner and took the stand that thirteen former employees had raised an industrial dispute before the labour court and during the course of adjudication eight employees out of the 15, settled their dispute with the appellant establishment by receiving full and final settlement. As per the said settlement the appellant made deposit of the EPF dues of the seven complainants and three others. The Industrial dispute in respect of those seven complainants thus withdrawn. The establishment had produced all the documents before the commissioner dis owning it' liabilities. But the commissioner never considered the stand of the appellant and passed the order on 11/01/2005, assessing Rs 12,33,714/- payable as deficit PF dues for the period 02/2000 to 04/2003. Being aggrieved he appellant filed the appeal ATA 302(4) 05, before the Tribunal and the tribunal by order dated 14/09/2010 remanded the matter to the commissioner for re assessment. The commissioner on reassessment passed the impugned order. Hence this is the second round of litigation. During the inquiry for re assessment, it was stated before the commissioner that for admission of the appeal an amount towards compliance of the provision of sec 7O an amount of Rs 6,16,857/- was deposited. That amount was considered for quantifying the deficit in deposit.

The appellant has stated that all the records and documents were produced during the inquiry, but the commissioner did not accept the contention of the establishment and considered the fake and forged documents produced by the complainants and

concluded on the liability of the establishment. Though demand was made to furnish the details of 30 complainants who are not the employee of the establishment as per its Mustor Roll, the same was not supplied. In stead the respondent on the basis of the photocopies of the attendance register filed by the complainants asked for production of the records relating to those complainants. The appellant , in response produced the attendance record for April 2000 to March 2003 , the PF Register for that period showing that for the said period the appellant had never more than 13 employees at any point of time. As directed it had also produced the form 3A and 6A along with the payment position for the inquiry period. But none of the documents were considered in passing the impugned order. Thus the appellant has pleaded that the order passed by the commissioner without identifying the beneficiaries and without considering the submission and documents of the establishment and thus not sustainable in the eye of law.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that during the inquiry many adjournments were allowed to the establishment for production of documents. But the authorized representative of the establishment only filed the copies of the wage sheet and balance sheet for period of inquiry. Thus the commissioner basing on the available records and report of the EO, as well as the documents produced by the complainants, passed the impugned order and the same is a well discussed and reasoned order. The commissioner has rightly assessed the amount. It has also been pleaded that the commissioner before passing the order had identified the beneficiaries and the order does not suffer from any infirmity on that score. The respondent has also pleaded about the legislative intention behind the beneficial legislation i.e the EPF&MP Act.

During course of argument the learned counsel for the appellant by placing reliance in the case of **Himachal Pradesh State Forest Corporation VS Assistant PF Commissioner,**

2008-III LLJ SC 581 and in the case of **Food Corporation of India VS RPFC,1990LLR,64,SC** submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing attendance of witnesses and production of documents required for adjudication. Since identification of beneficiaries is a pre requisite for assessment u/s 7A of the Act, efforts should have been made for the same. But the commissioner acted illegally while making the assessment without taking steps for identification of the beneficiaries in spite of demand made by the appellant. He also pointed out that the EO had visited the office of the ESIC for verification of appellant's records. But those were never brought on record nor opportunity of verifying the same was afforded.

The law is well settled that assessment under EPF &MP Act can not be made as if the liability is at par with the liability of Tax. It is also well settled that the EPFO is the custodian and Trustee of the subscribers and is duty bound to return the contribution to the subscribers. The purpose of the legislation is not to levy the amount as Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. Besides the view taken by the Hon'ble SC in the case of Himachal Pradesh State Forest Corporation referred supra, a similar view has also been taken by the Hon'ble High Court of Bombay in the case of **CBT, EPFO VS M/S Shakambari Ginning and Pressing Factory, Akola and Another ,2019 LLR,81.**

But in this case the impugned order clearly shows that inquiry was initiated on the complaint received from 13 no of ex-employees of the establishment. It is also an admitted position that out of the said 13 employees eight had raised a labour dispute and later on withdrew the same on full and final settlement with the appellant establishment which means there is no dispute on the identity of those employees. To establish the identity of the

remaining complainants the establishment was directed by the commissioner to produce the records relating to wage and salary paid to the employees during the period under inquiry. On 26/09/2012 the representative of the appellant apprised that they are not having the records prior to 04/2004. Since on behalf of the complainants their advocate had produced the copy of the salary register on 26/09/2012 and the appellant establishment had disputed the same, the advocate for the complainants on the next date produced challans showing ESI subscription of the complainants by the appellant, who omitted the EPF contribution for the said period in respect of the complainants. Those were verified by the EO and the AR of the establishment. There is no evidence that the documents and challans were found to be forged documents. The circumstance rather shows that the establishment being the custodian of the documents did not co operate for production of the same.

It was the specific stand of the appellant before the commissioner that the complainants produced some fake documents to prove their employment with the establishment during the period under inquiry. But no document or evidence otherwise was placed on record. The establishment, on the contrary took a stand that records prior to 2004 are not available. The law is well settled that the party to litigation who alleges fraud, carries the responsibility of proving the same. But in this case the appellant has failed to prove the alleged fraud and despite direction given, the establishment had failed to produce the complete documents. The burden is equally on the establishment participating in the inquiry to show as to who are the employees and eligible for the benefit as the records lie in the possession of the establishment.

Thus in this appeal it can not be said that the assessment was made without identifying the beneficiaries as the entire inquiry is on the basis of the complaints and the complainants had produced documents in proof of their claim before the inquiring authority.

The impugned order clearly identifies the beneficiaries. In view of the discussion made above, no illegality or infirmity is noticed in the impugned order. The appeal is thus held devoid of merit. Hence, ordered.

ORDER

The appeal be and the same is dismissed as without merit. The impugned order passed by the RPFC is hereby confirmed. Consign the record as per Rules.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/47/2019

M/s. G.A Digital Web Word
Through Ms. Prachi, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 17/08/2022

Compliance of the order dated 03.08.2022 done with the Respondent. Accordingly, there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 27.09.2022 for filing rejoinder by 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.870(4)2009

M/s. Standing Conference of Public Enterprises (Scope)
Through:- Sh. V.P Singh Ld. Counsel for the Appellant.

Appellant

Vs.

APFC-Delhi
Through:- Sh. Rajesh Kumar Ld. Counsel for the Respondent along with Sh.
Utkarshjeet Singh, RPFC

Respondent

ORDER DATED :- 17/08/2022

The Ld. Counsel for the Respondent submitted that compliance of the order dated 19.10.2022 has been done and an amount of Rs. 7,57,003 has been issued in favour of the Appellant. Accordingly, the proceedings in respect of the application filed by the Ld. Counsel for the Appellant/Applicant are hereby closed.

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-1/21/2022**

M/s. SPML Infra Ltd.
Through Ms. Sambhavi Pandey, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 17/08/2022

The Ld. Counsel for the Respondent filed the reply to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Appellant. List the matter on 14.09.2022 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-1/35/2022

M/s. Vishakha Facility Management Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 17/08/2022

The Ld. Counsel for the Respondent requested for some more time for filing the reply. Granted as a last chance. List the matter on 14.09.2022 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-1/36/2018

M/s. Sinhal Metal Industries

Appellant

VS.

APFC, Delhi (N)

Respondent

ORDER DATED:- 17/08/2022

Present:- None for the Appellant.

Shri Avinash Singh, Ld. Counsel for the Respondent.

The matter stands posted today for consideration of the application filed by the respondent praying dismissal of the appeal on the ground of limitation. Copy of the application was served on the A/R for the appellant who on the last date of adjournment had taken time for advancing argument today. But no argument is advanced as the advocate for the appellant is not present.

The Ld. Counsel for the respondent submitted that the appeal challenges the order dated 18.05.2017 passed u/s 14B of the EPF Act. The appeal was presented on 29.10.2018 i.e beyond the prescribed period of limitation. When the matter came up for admission on 30.11.2018, the inordinate delay was noticed by the tribunal being pointed out by the registry. Thus, the tribunal took a preliminary view that the appeal is barred by limitation. This has been reflected in the order dated 30.11.2018. Since then the matter is lingering for hearing on the limitation and order dated 13.12.2018 shows that the appellant had taken time for filing a petition for condonation of delay. Till date no such application has been filed nor the appeal has been admitted. In view of the situation and in absence of any circumstance explained by the appellant with regard to the delay, the appeal is held filed beyond the period of limitation and the same is dismissed as barred by limitation. Consign the record as per rule.

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-1/37/2021

M/s. Ghibellines Security Solutions Ltd.

Appellant

VS.

RPFC, Delhi (S)

Respondent

ORDER DATED:- 17/08/2022

Present:- Shri Dharmendra Mishra Proxy Counsel for the Appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

The matter stands posted today for consideration of the application filed by the respondent u/s 7L(2) of the EPF and MP Act praying review of the order dated 08.11.2021. On behalf of the respondent Shri Rajesh Kumar Ld. Counsel moved the application whereas Shri Dharmendra Mishra the Proxy Counsel for the appellant is present.

The Ld. Counsel for the respondent submitted that by order dated 18.12.2020 passed u/s 7A of the Act an amount of Rs. 7179163/- was assessed against the appellant towards deficit remittance of the Pf Contribution. During the inquiry the appellant while participating had admitted the liability and agreed to deposit the same on installment. The order of commissioner reflects the said admission. The Ld. Counsel for the respondent also pointed out that Director of the Appellant Company had attended a meeting with the officers at Airforce Station where he accepted the default and assured for depositing the defaulted amount. But after passing of the order the appellant challenged the same in the appeal. The respondent also mentioned that 70% of the assessed amount has already been recovered from the appellant and in view of the same the order dated 08.11.2021 need to be reviewed and modified to the

extent that the amount recovered by the respondent be treated as the amount for compliance of the provisions of section 7O.

The application filed by the respondent shows that before filing of this appeal an amount of Rs. 48,56,286/-has already been recovered. Hence, it is directed that the said amount be treated as the amount deposited by the appellant in compliance of the provision of section 7O of the EPF Act. The respondent is thus directed to submit FDR for the said amount i.e Rs. 48,56,286/- in the name of the Registrar of CGIT initially for a period of one year with provision of auto renewal within 15 days of this order. Call the matter on 1st September 2022 for compliance of the direction and filing of the 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. 903(4)2012**

M/s. Times Press Pvt. Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsels for the Appellant

Vs.

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

ORDER DATED :- 17/08/2022

LCR in this matter stands filed. The Ld. Counsel for the Appellant shall have the liberty to inspect the record. Arguments heard in part. List the matter on 25.08.2022 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. 544(16)2016

M/s. Cosmique Pvt. Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsels for the Appellant

Vs.

APFC, Gurgaon Respondent
Through Sh. Chakradhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 17/08/2022

Order in this matter could not be pronounced. List the matter
on 28.09.2022 for pronouncement of order.

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-2/12/2022

M/s. Sunshine Educational & Development Society
Through Sh. Kulvinder Singh Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 17/08/2022

The Appellant has complied with the order dated 12.07.2022 as an FDR amounting of Rs. 46,933/- stands deposited with Tribunal favouring Registrar CGIT. Accordingly, the appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 14.09.2022 for filing reply by the Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/32/2019

M/s. Viraj Exports Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 17/08/2022

The Ld. Counsel for the Respondent asked for some more time to file the reply. Granted as a last chance. List the matter on 28.09.2022 for 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-2/13/2022

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

Vs.

RPFC-Raipur (Chhattisgarh) Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 17/08/2022

Heard both the parties and it is ordered that the interim protection granted on 03.08.2022 to continue till 13.09.2022 when the matter is listed for pronouncement of order on the admissibility of the appeal before this Tribunal.

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-2/31/2022

M/s. SM Milkose

Appellant

Vs.

RPFC , Noida

Respondent

ORDER DATED :- 17/08/2022

Office report seen. List the mater on 23.08.2022 for admission hearing. Inform both the parties accordingly.

Presiding Officer