

**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. 629(4)2014**

M/s. Indus Construction Company

Appellant

VS.

APFC, Delhi,

Respondent

**ORDER DATED:-23/05/2022**

Present:- Shri J R Sharma, Ld. Counsel for the Appellant.  
Shri Narender Kumar, Ld. Counsel for the Respondent.

This appeal challenges the orders passed by the APFC Delhi on 30/06/2014 assessing Rs. 28,86,438/- u/s 7A of the Act, of the EPF and MP Act 1952 (herein after referred to as the Act), payable by the appellant establishment towards deficit P F dues of it's employees for the period 2007-2008, 2008-2009 and 2009-2010. The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of executing the civil construction work in Kachhi Colonies of Delhi inhabited by the poorer section of the society. The work executed are basically awarded by the MCD of Delhi and meant to construct the basic needs of sanitation and drainage. The work is often carried out in narrow lanes of the colonies having width of 4 to 5 feet. Since loading and unloading of building materials in the lanes using manual labour and mechanical means is impossible the appellant use to carry out the work using the traditional method of deploying donkeys. For the purpose the workers and their family members owning donkeys are usually engaged and payment is made in accordance to the work done by individual donkey. Since the donkeys have no name the payment is shown in the wage register against the owner of the donkey. The establishment is covered under the provisions of the Act. Notice dated 12/02/2010 was served on the establishment to appear 05/03/2010 and participate in the inquiry to be held u/s 7A of the Act as it was noticed that there is deficit in deposit of PF dues for the period 1/2007 to 03/2010. On the said day and thereafter the authorized representative of the appellant establishment appeared and produced all the relevant documents and records relating to it's employees and the deposits made under the schemes of the Act. In support of the contention, the wage Register, balance sheet, attendance register etc were also produced. Before initiation of the 7A proceeding the area enforcement officer had visited the establishment on various occasions to make inquiry on the anonymous allegations

received. But at last, those were found to be false as observed by the commissioner in the impugned order. The AR of the appellant establishment explicitly disputed the allegation of default or deficit in deposit. A written submission dated 03/07/2014 was also submitted during the inquiry. But the commissioner never considered the same and made assessment of the dues on the basis of the labour charges noted in the book of account, which were nothing but the donkey labour charges. The order was passed illegally without identifying the beneficiaries. Thereby the appellant has pleaded that the impugned order suffers from patent illegality and an outcome of improper appreciation of fact and law and liable to be set aside.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that the employees employed directly and indirectly are the employees of the establishment they are working for and fall well within the definition of employee provided u/s 2(f) of the EPF Act. It has also been pleaded that under the provisions of sec 8F read with Para 30 of the EPF Act and Scheme, the appellant being the employer owes the responsibility of remitting the PF dues of the employees. During the inquiry 60 adjournments were allowed to the establishment for production of documents. But the authorized representative of the establishment only filed the copies of the cancelled wage sheet and un audited balance sheet of a fraction period of inquiry. Thus the commissioner basing on the available records and report of the EO, passed the impugned order and the same is a well discussed and reasoned order. The commissioner has rightly assessed the amount. 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. He also argued that the payment was made to the owners of the donkeys have been wrongly calculated as wage.

The other argument advanced by the appellant is with regard to non identification of the beneficiaries. The law is well settled that assessment under EPF &MP Act can not be made as if the liability is

the liability at par with Tax. It is 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 taken 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.

In this case the impugned order clearly shows that despite direction given the establishment had failed to produce the complete documents. Though during argument the appellant has taken a stand that the EO submitted an adhoc report and the said report should not have been the basis of the assessment, the said plea was never taken before the commissioner. The burden is equally on the establishment participating in the inquiry as to who are the employees and eligible for the benefit as the records lie in the possession of the establishment. Furthermore there is no evidence to presume that the stand taken in this appeal were never taken during the inquiry. The submission made by the appellant and the stand taken in the appeal that the payment made to the donkey owners who maintain 3 or 4 donkeys can not be considered as labour charges is not accepted since the commissioner during the inquiry considered the cancelled wage sheet for assessment of the dues. A person might have carried out the work by his physical labour or by engaging a donkey. Any amount paid to him is considered as the wage paid to him as remuneration for the work. Since a donkey was engaged by him it can not be said that the amount paid is donkey labour charge as the donkey independently can not accomplish the work and need to be handled and tended by a human being. Since the commissioner made the assessment on the basis of the cancelled wage sheet and Bank challan, and also perused he un audited Balance sheet it can not be said that the assessment was made without identifying the beneficiaries. In view of the discussion made above, the appeal is held devoid of merit. Hence, ordered.

### **ORDER**

The appeal be and the same is dismissed as without merit. The impugned order passed by the APFC 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-1/98/2019**

M/s. Frontline (NCR) Business Solutions Pvt. Ltd. Appellant  
Through Ms. Sneh Lata Jha, Proxy Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 01.08.2022 for filing the 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-1/99/2019**

M/s. Frontline (NCR) Business Solutions Pvt. Ltd.  
Through Ms. Sneh Lata Jha, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 01.08.2022 for filing the 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-1/100/2019**

M/s. Frontline (NCR) Business Solutions Pvt. Ltd.  
Through Ms. Sneh Lata Jha, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 01.08.2022 for filing the 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-1/03/2019**

M/s. Toshali Resort International  
Through Sh. Vishal Arun, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The reply to the main appeal stands filed by the Ld. Counsel for the Respondent. Copy of the same supplied today to the Ld. Counsel for the Appellant. List the matter on 28.09.2022 for final arguments. Meanwhile, the Appellant shall have the liberty to file the rejoinder, if any, before the next date of hearing along with serving a copy of the same upon 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-1/17/2021**

M/s. Rajiv Gandhi Cancer Institute & Research Appellant  
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 02.08.2022 for filing the 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. 1409(4)2015**

M/s. Crimson Commercial Service Appellant  
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Vs.

APFC, Delhi Respondent  
Through Sh. J.K Sinha, Ld. Counsel for the Respondent

ORDER DATED :- 23/05/2022

Matter was listed for hearing on the miscellaneous petition filed by the Ld. Counsel for the Respondent for correction of name in orders dated 17.01.2022 and 28.02.2022. He prayed that in place of J.K Sinha, the appearance for the Ld. Counsel for the Respondent is marked as Sh. Rikesh Singh, and the same may be corrected. Perused and ordered accordingly, that the name of Sh. Rikesh Singh, in order dated 17.01.2022 and 28.02.2022 be read as Sh. J.K Sinha. List the matter on 11.07.2022 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-1/30/2018**

M/s. The Institute of Charter Accountants of India  
Through Sh. Raj Kumar, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 02.08.2022 for filing the 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. 65(4)2015**

M/s. Bobby Creation  
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent submitted the LCR. Taken on record. Arguments on the maintainability of the appeal heard and concluded. List the matter on 24.05.2022 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. D-1/19/2017**

M/s. Superwell Services Pvt. Ltd.  
Through Sh. J.R Shamra, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

Matter heard in part. List the matter on 28.09.2022 for  
continuation of 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-1/03/2018**

M/s. G4S Facility Services India Pvt. Ltd. Appellant  
Through Sh.Gulshan Chawla, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

None appeared on behalf of the Respondent no. 2 that is M/s  
Bhartiya Janta Majdoor MahaSangh. Accordingly, Respondent no. 2 is  
proceeded as ex-parte. List the matter on 28.07.2022 for final  
arguments 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-1/05/2018**

M/s. Raheja Developer Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

Arguments heard in part on behalf of the Ld. Counsel for the Respondent. 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-1/07/2018**

M/s. G.L Management Services Pvt. Ltd. Appellant  
Through Sh. Manish Malhotra, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (E) Respondent  
Through None for the Respondent

ORDER DATED :- 23/05/2022

As no time left. List the matter on 12.10.2022.

**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-1/26/2018**

M/s. Mohanil Gas Service  
Through None for the Appellant

Appellant

Vs.

APFC, Delhi (S)  
Through None for the Respondent

Respondent

ORDER DATED :- 23/05/2022

As no time left. List the matter on 10.10.2022.

**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-1/38/2018**

M/s. Kee Pharma Limited  
Through Sh. Pranab Prakash, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

As no time left. List the matter on 10.10.2022

**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-1/35/2019**

M/s. Ex-Man Raghav Security Services Pvt. Ltd. Appellant  
Through Sh. Sanjay Kumar, Ld. Counsel for the Appellant

Vs.

RPFC-1, Delhi (E) & 06 Ors Respondent  
Through Sh. Sandeep Vishnu, Ld. Counsel for the Respondent

ORDER DATED :- 23/05/2022

As no time left. List the matter on 10.10.2022

**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-1/39/2019**

M/s. Oreal South Asia Pvt. Ltd. Appellant  
Through Sh. B.K Chhabra, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

As no time left. List the matter on 10.10.2022

**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-1/40/2020**

M/s. Shahnaz Ayurvedics Appellant  
Through Sh. Alok Bhasin, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

As no time left. List the matter on 10.10.2022

**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-2/21/2018**

M/s. GNG Limited

Appellant

VS.

APFC, Gurugram

Respondent

**ORDER DATED :-23/05/2022**

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

This appeal challenges the orders passed by the APFC Gurugaon on 20/07/2018 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. 5,76,818/- & Rs. 2,98,983/- respectively on the appellant/establishment for the period 1/04/1996 to 13/02/2018. The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of supply, erection, testing and commissioning of 11KV and LT lines for distribution of electricity. Since the date of its coverage, the establishment was diligent in deposit of PF dues of its employees including compliance of different provisions of the Act. Notice dated 13/02/2018 along with statement showing belated deposit of PF dues and 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 on 12/03/2018. 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. Not only that during the inquiry various legal objections including the fact that the respondent has initiated the inquiry after an inordinate delay i.e after almost 14 years was raised. The authorized representative had also pointed out that the proceeding cannot be taken separately for damage and interest as the Hon'ble High court of Delhi in the case of System and Stamping vs. EPF Appellate Tribunal and Others have held that the interest prescribed u/s 7Q being in-built under Para 32A in the quantum of damage, there can not be a separate calculation of damage. Amongst other grounds it was also pointed out that in view of Departmental circular dated 29<sup>th</sup> May 1990, the levy of damage should be as per the rate prescribed under the circular and nothing more towards separate interest. The validity of the circular has also been upheld by the Hon'ble High Court. The Representative of the

Respondent had also sought time to verify the records as they relate to an old period. Oral submissions were made with regard to the loss in business suffered which almost closed the business of the appellant in the year 2015. But 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 and without giving any finding on the mensrea of the appellant behind the delay in deposit of the PF contribution. The Principle of Natural Justice were flaunted 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. He has also filed a written notes of argument in which the maintainability appeal on merit has been questioned. Citing various judgments of the Hon'ble High Courts and the Apex Court he submitted that the EPF Act and the EPF Scheme do not prescribe explicitly that the interest and damage are in built under Para 32 A of the EPF scheme. Thus the plea of the appellant is baseless and cannot be accepted. He also pleaded that the order u/s 7Q was passed separately and the same cannot be understood as a composite order. 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 intentional delay in remittance of the PF dues. Despite direction the appellant establishment could not produce documents showing deposit of the PF dues in time. Not only that the establishment also did not produce any document supporting the mitigating circumstances pleaded orally. Thus, the commissioner has passed a well reasoned and speaking order on the basis of the materials available during the inquiry. The learned counsel for the respondent thus argued that the impugned order does not entail interference.

The Ld. Counsel for the appellant had filed rejoinder supported by documents and during course of argument submitted that the APFC at the first instance initiated the inquiry after lapse of 3 years which stands contrary to the circular issued by the EPFO. The mitigating circumstance explained werenot 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..The impugned order passed u/s14B also suffers patent illegality in as much as not providing the opportunity to the appellant of explaining the mitigating circumstances and for not assigning reason for imposing interest at the highest rate. The Ld. Counsel for the appellant submitted that the statute doesn’t provide any time limit for initiating an inquiry u/s 14B of the Act. But the EPFO by its circular dated 15.10.1990 have issued guideline for initiating the inquiry u/s 14B within a period of 3years from the date when it falls due. 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 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. RPFC 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 3<sup>rd</sup> 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 his likely to be irretrievably prejudiced by the belated issuance of such a show cause notice.

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 as there is absolutely no material to presume that belated issue of show cause notice has caused prejudice to the appellant and the appellant during the intervening period has changed the position to it’s detriment.

The Ld. Counsel for the appellant further argued that the commissioner in this case has imposed the damage at the maximum rate prescribed under the scheme. He was neither aware of the discretion vested on him nor has assigned any reason for arriving at such a decision. To support his contention he relied upon the judgment of **APFC vs. Ashram Madhyamik, 2007LLR1249** wherein the Hon’ble High Court of Madhya Pradesh have held that imposition of full damage is not compulsory and it is discretionary as

understood from the word “May” used. Not only that the Hon’ble Supreme Court in the case of **ESIC vs. HMT Limited (2008ILLJ814SC)** have clearly pronounced after considering the Hindustan Times case that when a discretion was conferred on the statutory authority to levy penal damage, the provision could not be construed as imperative. While pointing towards the calculation sheet supplied along with the notice during the impugned inquiry,(annexture-6) he argued that the said calculation contains in detail the miscalculation by the department with regard to the days of delay and the damage leviable. To pin point his argument he submitted that the calculation sheet clearly shows that the respondent has charged damage @22% instead of 10% and damage @17% instead of 5%p.a even when the delay is less than two months. He thus argued that the mechanical approach of the commissioner in calculating and levying damage stands contrary to the discretion vested with him and the judgment of the Hon’ble Full bench of High Court of Delhi in the case of **Roma Henny Security Services Pvt. Ltd vs. CBT, EPFO,2012(135)FLR799.**

The other argument of the appellant is with regard to mensrea. He strenuously argued that after the amendment of the EPF and MP Act since the word penal has been added before the damage u/s 14B it has become obligatory for the inquiring authority to give a finding in respect of the mensrea of the establishment attracting imposition of penal damage. He placed reliance in the case of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and the case of **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017LLR 337** to submit that the Hon’ble Apex Court held that absence of finding on mensrea makes the impugned order illegal and not sustainable in the eye of law. But this argument of the learned counsel with regard to the mensrea is not accepted for the recent judgment of the **Hon’ble SC** in the case of **Horticulture Experiment Station,Gonikoppal,Coorgvs RPFC(civil Appeal No 2136/2012).**But from the impugned order it is clearly evident that the commissioner while passing the impugned order failed to consider themitigating circumstances and in a mechanical approach made the calculation of damage applying a mathematical method which makes the order illegal.In this regard ,reliance was placed in the case of **M/s Prestolite of India Ltd. vs. the Regional Director and other, AIR1994 Supreme Court, 521.**

On hearing the argument and on perusal of the impugned orderpassed u/s 14B of the Act it appears that the commissioner never accepted the objection with regard to the calculation of the damage and interest, gave no finding at all on the mitigating circumstances behind the delay in remittance nor considered the objection with



regard to the miscalculation of days of default and rate of damage. On behalf of the appellant along with the appeal the office copy of the calculation supplied along with the notice by the respondent has been filed. The establishment has stated in clear terms that after going through the statement attached to the notice they found some miscalculation with the regard to the rate of damage proposed. But the impugned order nowhere reveals that a revised calculation was made or the said plea of the establishment was answered. On the contrary the commissioner closed the inquiry abruptly and without giving the establishment an opportunity of tracing out the old records when the inquiry was held after 14 years.

Thus, from the totality of the circumstances and the pleas canvassed in this appeal it clearly appears that the commissioner had passed the impugned order u/s 14B without application of mind and without giving due consideration to the various legal objection taken by the appellant and proceed with a mathematical calculation as if assessment of Tax. For the mistakes pointed out in calculation of damage, the Learned Counsel for the Appellant argued for setting aside the impugned order. It is a fact that in a catena of decisions the Hon'ble SC and the Hon'ble High Courts of different States it is held that the Adjudicating Authority is not bound to issue mechanical order, but to find out the real cause behind the delay in remittance and to assess the damage.

In this context, the observation of the Hon'ble High Court of Kerala in the case of *Regional Provident Fund Commissioner Vs. Harrisons Malayalam Ltd. 2013 LLR 1083* is relied upon. In that judgment it has been held that Clause 32A is only a guideline and not a rigid formula to be applied uniformly in all cases of delay in payment of contributions but shall be applied objectively taking into account the reasons for delay pleaded by the defaulter and in appropriate cases lesser amount than what has been prescribed in Clause 32A shall be imposed. The Hon'ble High Court of Madras was of the same view in the case of *Terrace Estates, Unit of United Plantation Ltd. Vs. APFC, Coimbatore 2010 LAB IC 252*. It is observed that Clause 32A of the EPF Scheme can be termed only as guideline and it cannot be stated that the authority can pass the order mechanically applying the regulations. More over when the statute prescribes that the Statutory Authority “**may recover**”, the same necessarily means that there is an implied discretion vested with the Adjudicating Authority (Respondent) to consider the matter in issue from every aspect before assessing the damage. Undoubtedly, here the Respondent- Adjudicating Authority none else the Assistant P.F. Commissioner, though can not be found with fault in assessing damage after a long delay, it is held

that the Adjudicating Authority could have exercised his discretion, taking into consideration the mitigating circumstances argued and the period of delay in remittance. But it is found that the Adjudicating Authority/Respondent had never these aspects and the submission of the Appellant regarding the loss sustained by it. The Respondent adjudicator, without exercising its discretion, is found to have mechanically assessed the damage at the upper limit and imposed the damage and interest for the period under inquiry.

In view of the facts discussed it is felt proper to reduce the assessed amount under 14B and modify the order to that extent. But the assessment for recovery under 7Q amount needs no interference as two separate orders have been passed and the order passed u/s 7Q is not appealable. In the result, the Impugned Order under 14B is modified reducing the same to 50% of the assessed amount. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed in part. The impugned order passed u/s 14B of the EPF and MP Act is here by modified. It is held that the appellant is liable to pay 50% of the amount assessed u/s 14B in the impugned order. Any amount deposited by the appellant as a part of the assessed amount u/s14B shall be adjusted towards the 50% as directed in this 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-2/15/2022**

M/s. Sadhu Auto Parts Pvt. Ltd. Appellant  
Through Sh.J.R.. Sharma & Sh. Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 23/05/2022

Arguments on the admission as well as miscellaneous application filed for granting stay on the impugned orders heard and concluded. List the matter on 01.08.2022 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 orders 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-2/18/2020**

M/s. Bata India Ltd.  
Through Sh. Gyan Prakash ,Proxy Counsel for the Appellant

Appellant

Vs.

RPFC, Faridabad  
Through Sh. Abhik Mishra, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 23/05/2022

Counter reply to the appeal stands filed. Copy of the same supplied today to the Proxy Counsel for the Appellant. List the matter on 28.09.2022 for final arguments. Meanwhile, the Ld. Counsel for the Appellant shall have liberty to file the rejoinder, if any, along with serving a copy of the same to 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-2/14/2021**

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

Vs.

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

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 02.08.2022 for filing the 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-2/15/2021**

M/s. Bharosa Technoserve Pvt. Ltd. Appellant  
Through Sh. Deepak Grover, Ld. Counsel for the Appellant

Vs.

APFC, Gurugram (E) Respondent  
Through Sh.B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 23/05/2022

As the pleadings in this matter are complete. List the matter on  
28.09.2022.

**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-2/20/2021**

M/s. Nilkamal Security Services  
Through Sh. Ravi Ranjan, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

The Ld. Counsel for the Respondent wants some more time to file the reply. Granted. List the matter on 02.08.2022 for filing the 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-2/23/2021**

M/s.N1 Media Consultancy Pvt. Ltd.  
Through Sh. Gyan Prakash, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 23/05/2022

Compliance of the order dated 23.03.2022 & 11.05.2022 stands reported. 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 02.08.2022 for filing reply.

**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-2/12/2020**

M/s. ASF Insignia  
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Regional Office Gurgaon  
Through Sh.Chakardhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 23/05/2022

List the matter on 13.09.2022 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. 811(16)2014**

M/s. YKK India Pvt. Ltd.  
Through Sh. Vivek Kaushal, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Gurgaon  
Through Dr. S. C Gupta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 23/05/2022

Arguments on the restoration petition heard and concluded. The Ld. Counsel for the Respondent has no objection if the restoration petition is allowed, the present application for restoration is hence, allowed. The appeal stands restored to its original number. Further, final arguments heard and concluded. List the matter on 30.05.2022 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. D-2/06/2019**

M/s. Flexo Foams Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

RPFC, Gurgaon  
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 23/05/2022

List the matter on 12.07.2022 for final arguments.

**Presiding Officer**