

**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-2/01/2021

M/s. Om Enterprise

Appellant

Through:- Shri S.K. Khanna, Ld. Counsel for the Appellant.

Vs.

RPFC, Noida

Respondent

Through :- Shri Narender Kumar Singh, Ld. Counsel for the Respondent.

ORDER DATED 11.02.2021

This appeal has been filed challenging the order dated 13.10.20 passed by the RPFC Noida in exercise of the power u/s 14B of the E P F and M P Act ,assessing Rs.9,08,746/- as damage payable by the appellant on account of delayed remittance of EPF contribution of its employees for the period 03/2016 to 12/2019.

Bereft of unnecessary details the facts pleaded by the appellant are that it is an establishment covered under the EPF & MP Act and engaged in the business of supply of man power to different organizations. It was diligent in contributing to the statutory dues of its employees. The RPFC Noida had initiated an inquiry against the appellant establishment for imposition of damage and penal interest alleging belated remittance of PF Dues of its employees during the period 3/2016 to 12/2019. In fact, no proper notice was served on the establishment nor adequate opportunity was given for explaining the circumstances leading to belated remittance. The RPFC, in a whimsical manner went on to decide the matter ignoring the absence of the appellant and passed the ex parte order challenged in this appeal. It has further been stated that the first summon dated 19.02.2020 was served on the establishment wherein the next date was fixed to 24.02.2020. There being no adequate time allowed, the representative of the establishment appeared and requested for time. The matter was thereafter adjourned to 19.03.2020, 07.09.2020 and 25.09.2020 without any proceeding being recorded. On 09.10.2020 the proceeding was held when the RPFC directed for issue of fresh summon to the appellant establishment. In the said summon dated 09.10.2020, the appellant was asked to appear on 12.10.2020. But the appellant could not appear as the summon was received on 18.10.2020 i.e. after the date fixed. The RPFC without verifying the fact relating to service of the summon passed the impugned non speaking order on 13th October, 2020. Being aggrieved the appeal was filed on 31.12.2020, that is within the prescribed time limit computed from the date of knowledge. Thus, the appellant has stated that the arbitrary order passed by the APFC, is liable to be set aside and the matter be remanded for reconsideration.

No written objection was filed by the respondent to resist the stand taken by the appellant. However, the learned counsel appearing for the respondent participated in the hearing and took serious objection to the prayer for remand of the matter. He pointed out that the impugned order was passed on 13th of October, 2020 by the Commissioner after giving ample opportunity to the appellant to explain the circumstances leading to belated remittance. The establishment was fully aware of the pendency of the proceeding and its representative had appeared on 12.03.2020 and had prayed for time. The establishment thereafter abandoned the proceeding and the commissioner, following the principles of natural justice, got a fresh summon issued. The establishment again failed to explain its stand and the commissioner had rightly passed the impugned order. He also submitted on legislative intention behind this beneficial legislation and submitted that the very purpose of the Act would be defeated if the matter is remanded giving another opportunity to the establishment to avoid the payment of damage.

The appeal has been challenged on the ground of lack of opportunity to set up a defence and explain the alleged delayed remittance. It has also been argued that the establishment on obtaining the certified copy of the calculation forming basis of the order noticed various anomalies with regard to the actual dates of challan and the receipt dates mentioned in the calculation sheet which have a determinative effect on the finding of the commissioner. Unless proper opportunity would be afforded to explain the same, the end result would be miscarriage of justice. The other limb of his argument is that the commissioner has passed a non speaking order without giving finding about the criminal intention or mensrea of the appellant establishment for the alleged delayed remittance. By placing reliance in the case of APFC vs Management of RSL Textiles India Pvt Ltd reported in 2017(3)SCC 110, he submitted that the commissioner is duty bound of giving a finding on the mensrea. No finding on the same, renders the order unsustainable in the eye of law.

The learned counsel for the respondent submitted that detailed reply by the management need to be submitted meeting all the points raised by the appellant. However he submitted that when the appellant in spite of receipt of summon, opted not to contest, the same amounts to admission of facts alleged. But this submission of the learned counsel for the respondent does not appeal to the conscience of this Tribunal. Furthermore, the plain reading of the order does not show when the notice was served on the establishment. The commissioner has only mentioned that after several adjournments, the final hearing was made on 12.10.2020 and order was passed on 13.10.2020.

This appears to be a very cryptic order, where the commissioner has not discussed a word about the submission of the department on the delayed remittance. The Hon'ble Supreme Court in the case of ShriSwamiji of Sri Admar Mutt vs The Commissioner Hindu Religious and Charitable Endowment Dept reported in AIR 1980 SC 1 have held that reason is the soul of the law and when the reason of any particular law seizes, so does the law itself.

In this matter the impugned order is completely silent about the mensrea of the appellant for the delayed remittance. Similarly, the LCR called from the Respondent contains no evidence of service of the summon dated 09.10.2020 on the appellant, though the impugned order contains the observation of the commissioner that the said summon was issued by post as well as through e mail. The reply of the appellant in this regard is that no mail was ever sent in the registered mail id and the postal summon was received much after the date fixed.


The Hon'ble High Court of Delhi recently in the case of M/s. United News of India vs RPFC have issued direction on the procedure to be followed with regard to the service of summons on the establishments to ensure adherence to the principles of natural justice. In this case it is observed from the lower court record that no proper opportunity was given to the appellant to set up it's defence and the RPFC in complete violation of the circular dt1.10.20 issued by EPFO, for virtual hearing due to the ongoing COVID 19 restriction, conducted physical hearing.

It would not be out of place to mention that the Hon'ble Supreme Court on repeated occasions i.e. in the case of RSL Textiles and also in the case of McleodRussel India Pvt Ltd vs Regional Provident Fund Commissioner reported in 2014 SC 527 have held that when there is no finding rendered on the mensrea or actusreus on the part of the employer, the order becomes illegal.

In this matter taking into consideration all the aspects as discussed in the preceding paragraphs, it is held that the cause of justice would be best served if the impugned order at this stage be set aside and remanded for reconsideration after giving proper opportunity to the appellant to set up a defence and explain the circumstances. Hence, ordered.

ORDER

The appeal is disposed off at admission stage. The impugned order is hereby set aside and the matter is remanded for reconsideration by the commissioner after giving due opportunity to the appellant to plead his stand. The commissioner is also directed to give finding on the mensrea of the establishment for the delayed remittance, in case it is found liable for damage and pass a speaking order. The commissioner is directed to dispose of the matter strictly within three months from the date of receipt of the order.


(Presiding Officer)