

**BEFORE THE HON'BLE 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. 598(16)2011**  
**ORDER DATED:- 20 November, 2020**

M/s. BIC Logistics Limited

Appellant

Vs.

RPFC, Gurgaon

Respondent

Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.  
Shri Puneet Garg, Ld. Counsel for the Respondent.

This appeal challenges the composite order dated 25.07.2011 passed by the RPFC Gurgaon u/s 14B and 7Q of the EPF and MP Act imposing Rs. 120125/- and 80647/- as damage and interest respectively on the appellant establishment for the period 09/2001 to 11/2006.

The facts asserted by the appellant in short is that it is a Pvt. Ltd. Company came under the scope of the Act w.e.f 01/09/2001. The respondent had passed an order u/s 14B and 7Q of the Act against the establishment for the period 09/2001 to 11/2006. Being aggrieved by the said order dated 14.11.2008 the appellant had preferred an appeal and registered as ATA No. 872(16)/2008 and this tribunal after hearing the parties had passed an order on 07.04.2010 holding that the assessment for the pre discovery period is illegal and thus, remanded the matter for reconsideration excluding the employee share for the pre discovery period. As directed the appellant appeared before the respondent and submitted a letter on 14.05.2011 stating that a revised statement as per the direction of the tribunal may be prepared and opportunity be given for rebuttal. Though the said letter was acknowledged by the respondent, no next date of hearing was fixed. On the contrary the respondent passed an ex-parte order on 25.07.2011 making calculation and levy of damage for the period September 2001 to November 2006 which included the period from October 2001 to February 2004 in respect of which a separate order of assessment was made and the same was challenged in ATA No. 174 of 2005 and again remanded by the tribunal for reconsideration.

Thereby the respondent made assessment in the impugned order twice for the period 2004 to 2006. The other challenge made by the appellant is that in the impugned order the respondent has not only failed to discuss about the mensrea for the delayed remittance by the appellant but also failed to extend proper opportunity for rebuttal evidence to be adduced on the revised assessment excluding the pre deposit period. These lapses on the part of the respondent makes the order illegal and liable to be set aside.

The respondent by filing a written objection has supported the impugned order. It has been stated that the EPF Authority had passed the order u/s 14B and 7Q initially for the period 09/2001 to 11/2006 assessing Rs. 1,35,018/- and Rs. 80,647/- as damage and interest respectively. This tribunal by order dated 07.04.2010 passed in ATA No. 872(16)2008 while setting aside the order remanded the matter for recalculation excluding the employees share for the pre discovery period. Accordingly the commissioner revised the assessed amount excluding the pre discovery period. No illegality is evident in the said order since the order itself shows that several opportunities were given to the establishment to appear and participate in the proceeding. For the negligence of the establishment the respondent rightly passed the impugned order and the same needs no interference.

On hearing the argument advanced by the parties and perusal of the impugned order leads to a conclusion that the commissioner took note of written representation of the establishment and made several adjournments in the proceeding. Ultimately he closed the hearing on 07.07.2011 and thereafter passed the order.

The contention of the appellant is that when the commissioner acknowledged the application filed by the appellant demanding a revised statement following the direction given by this tribunal while remanding the matter, should have intimated the appellant the next date of hearing by sending a separate notice, and that having not been done, the appellant could not get the opportunity of setting up a proper defence or to rebutt the revised calculation.

The impugned order nowhere reveals that after receipt of the written submissions by the appellant for supply of revised statement the same was complied or a fresh notice was issued. Being a quasi judicial authority the commissioner should have issued a revised calculation of the damage and interest to the appellant calling him to explain as to why the same shall not be levied. Not only that there is no finding at all in the impugned order about the mensrea of the establishment for delayed remittance. Once that this tribunal had remanded the matter for recalculation and assessment excluding the employees share for the pre discovery period, it was obligatory on the part of the commissioner to verify the records like wage, and salary register of the employees of the said pre discovery period giving equal opportunity to the appellant for the verification of the same before

passing the impugned order. It seems that the commissioner without giving proper notice about the date of hearing and without verifying the documents of the establishment with regard to the salary of the employees for the pre revised period passed the order in a fanciful manner which makes the same illegal and not sustainable in the eye of law. The order is thus, held liable to be set aside. Hence, ordered.

**ORDER**

The appeal be and the same is allowed and the impugned order dated 25.07.2011 is hereby set aside. Copy of the order be sent to the parties under Rule 20(1) of EPFAT (Procedure) Rules 1997.

Sd/-  
Presiding Officer