

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.
Pronounced from Camp Court at Dehradun**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. 411(14)2014

M/s. RFB Latex

Appellant

VS.

APFC, Noida
Respondent

ORDER DATED :-19/05/2022

Present:- Shri Kishor Behuriya, Ld. Counsel for the appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with an application filed by the respondent of the appeal invoking the provision of law laid u/s 7L(2) of the EPF &MP Act, for review of the order dated 14.11.2014 passed by this Tribunal disposing the Appeal and setting aside the impugned order.

It has been stated in the petition that the Appeal was filed challenging the order passed by the commissioner u/s 14 B of the EPF & MP Act on the ground that the inquiry was conducted for the default in timely remittance of the EPF contribution of the employees, but the commissioner while passing the impugned order did not assign any reason for imposition of the penal damage nor returned any finding on the mensrea of the establishment. Apart from that, several other grounds were also taken by the appellant challenging the legality of the impugned order. But this Tribunal while passing the final order omitted to consider that the appellant establishment was a habitual defaulter and the grounds taken in the appeal are not sustainable in the eye of law. The Tribunal also interpreted the law laid down by the Hon'ble SC in the case of ESI Corporation vs. HMT Ltd &Anr. Hence there being error apparent on the face of the record in as much as the final order passed in the appeal, the same be rectified by amending the order dated 14.11.2014.

Copy of the petition was served on the Appellant's counsel who filed a written objection and advanced his argument opposing the petition filed u/s 7L(2) of The Act.

The learned counsel for the petitioner/respondent further submitted drawing the attention of the tribunal to the recent judgment passed by the Hon'ble SC in the case of **Horticulture Experiment Station, Gonikoppal Coorg vs. RPFO (Civil Appeal No. 2136/2012)** to submit that in a



proceeding of civil nature existence of mensrea is not a factor to be considered. Hence the final order passed in the appeal contains a finding of this Tribunal which is an error apparent on the face of the record and need to be rectified in the interest of justice.

To buttress his argument he submitted that the scope of Review provide u/s 7L(2) is wide and by exercise of power under that provision the Tribunal can rectify any mistake committed during adjudication.

In his reply the learned counsel for the opposite party/Appellant submitted that the scope of Review u/s 7L(2) is limited to correction of errors which is apparent on the face of the record. But in his petition the petitioner has raised many questions touching the merit of the appeal, which can not be entertained. If it is so done, the same will have the effect of re hearing of the appeal on merit by the tribunal for review of it's own final order passed, which is not permissible under law. He thereby argued for rejection of the application. Reliance has been passed by the opposite party/appellant in the case of **Food Corporation Of India, Dirba vs. RPFC, Bhatinda, decided by the Hon'ble High Court of Delhi in WPC5678/2013**, where in 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 from the record by amending the order passed. But the provision never empowers the Tribunal to rehear the matter on merit when some points are re canvased after disposal of the appeal. In view of the stand taken by the respondent in the it is clear that the respondent /petitioner wants rehearing of the disposed of appeal, which is not permissible under the scope and ambit of law laid u/s 7L(2) of the Act.

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 have the effect of the Tribunal hearing an appeal against it's own order, which is not permissible under the provisions of sec 7L(2) of the EPF&MP Act.

The petition for review, filed by the respondent is



held devoid of merit and rejected. Consign the record as per law.

Presiding Officer



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