

**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 460(16)2011

M/s.Continental Profiles Ltd (previously known as M/S Hein Lehman(India) Ltd
Appellant

VS.

RPFC, Faridabad

Respondent

ORDER DATED -17/01/2022

Present:- Shri S K Gupta Ld. Counsel for the Appellant.
Shri B B Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the orders passed by the RPFC Faridabad on 12/07/1989 under section 7 of the EPF and MP Act 1952 (herein after referred to as the Act) directing the appellant establishment to make deposit of the EPF contribution of it's eligible employees w.e.f 15th April 1982 the date from which the establishment is covered under the Act failing which the dues payable shall be assessed. Challenging the said order and applicability of the Act and liability thereunder since April 1982, this appeal has been filed.

The Respondent appeared through it's counsel and filed written reply to the grounds taken in the appeal. Both the counsels advanced their elaborate arguments during the hearing.

The stand taken by the appellant is that the appellant M/S Continental Profiles Ltd, previously named as M/S Hein Lehman(India) Ltd is a public Limited Company duly registered under the Companies Act 1956. It had a factory at sector 6 Faridabad where several products are being manufactured in

relation to the company's business. In the year 1980-81 the board of directors decided to set up another factory at Faridabad and accordingly a new factory was set up on the backside area of the existing factory known as Wire Drawing Division for production of high quality steel wires. This being a separate factory, the management applied for allotment EPF code no, which was allowed and code no HR /10195 was allotted. The said factory started production in the year 1982. Though the said factory being allotted with code no in the year 1982 is entitled to the infancy protection for three years as per the provisions of sec 16(1) (d)of the Act as it was then, the Respondent on 25.11.86 issued a letter observing there under that the Wire Drawing Division is only an expansion of the business of the old company having code no PN/3734 and as such the Wire Drawing Division is under the statutory obligation of complying the EPF contribution of it's eligible employees. The establishment disputed the observation made by epfo and disputed the manner in which two separate factories were clubbed up. It also demanded an opportunity to explain it's stand. Thus, on the request of the establishment the EPFO decided to hold an independent inquiry with regard to the applicability of the Act to the new factory from 1982 and on 17.2.87 summon u/s 7A was issued. During that inquiry the Wire Drawing Division through it's representative by filing written submission pointed out how the two factories are independent entities. Attention was also drawn to the principle laid down by the Hon'ble High Court of Bombay as to when two factories can not be clubbed and asked for infancy protection. But the commissioner failed to appreciate the fact and law and basing upon the report of the EO, passed the impugned order. Being aggrieved the appellant filed a writ petition before the Hon'ble High Court of Punjab &Haryana and later on leave being granted by the Hon'ble Court, filed the present appeal.

During course of argument the learned counsel for the appellant submitted that the short question to be answered in this appeal is whether Wire Drawing Division is an independent establishment established in the year 1982 or it is an extension division of the old factory and basing upon the provision of sec 16(1)(d) as it was then, whether the appellant is entitled to

infancy protection. by referring to the letter of the respondent dt 25.11.86, clubbing the Wire Drawing Division with the appellant establishment he pointed out that the commissioner took a wrong view of the matter.

The learned counsel for the respondent extensively argued on the legislative intention behind the beneficial legislation i.e EPF&MP Act and submitted that the employer some times in order to avoid statutory liabilities under the Act, bifurcate the existing establishment to one or two new establishments with the sole purpose of avoiding statutory contribution under the grab of infant establishment and the present case is a typical example. He thereby supported the impugned order.

The appellant has relied upon the judgment of the Hon'ble High Court of Bombay in the case of Dharamsi Morarji Chemicals Ltd vs RPFC, 1985 LLJ483, where in, principles have been laid down as to when two factories can not be clubbed for denial of infancy protection u/s 16 of the Act. On the other hand the learned counsel for the respondent placed reliance in the case of M/S L N Gadodia & Sons & Another vs RPFC, decided by the Hon'ble SC in SLP(civil)11230/2008 wherein all the previous judgments including the case of Dharamsi Morarji Chemical (supra) have been discussed to argue that there is no hard first rule of test and each case is to be examined on the facts of that case. In respect of this case the commissioner has given out the reasons in support of his finding.

On hearing the argument advanced by both the parties and on a mindful reading of the judgments relied by them it appears that the Hon'ble SC way back in the year 1960 in the case of Associated Cement Company Ltd Chaibas vs Their Workmen AIR 1960 SC 56 had laid down the factors which need to be considered to find out if two establishments are the division of one company or different establishments with distinguished identity. The case of Dharamsi Morarji referred supra and relied by the appellant came up for consideration before the Hon'ble SC in the case of M/S LN Gadodia referred supra as relied by the Respondent. The Hon'ble SC observed that there is no hard and first rule for test in this regard. Following the principle in the

case of Associated cement referred supra, the court in the case of LN Gadodia observed

“unity of ownership, management and control may be the important test. But fundamental integrality or general unity is an important test too. Since director of two companies come from the same family, Managing Director is the same, two senior officers are the same, both of them have same Regd office and common telephone no and Gram no, and second company gave loan to the other, it is held that the two companies are the companies of one family. The two companies for having two separate names can not be two entities in strict sense.”

Now for the case in hand from the impugned order it is noticed that the commissioner was guided to his finding on the facts reported by the EO that the

- 1-Registered office of both the units is same
- 2-Mr P.K.Daga is the MD for both the establishments.
- 3-Shri N K Sen the Manager/occupier was previously in the establishment of the appellant company
- 4-memorandum of Association for both the Companies is the same.
- 5-phones and Grams are the same.
- 6-there is centralized accounts office for both the units
- 7-sales tax and central Tax no dt 24/12/70 is the same for both the units.
- 8-Rs 40lakh was internally financed by the appellant to Wire Division and there is inter departmental flow of finance.
- 9-the stainless steel wire drawing is used by the appellant company in achieving the product.

In his rebuttal argument, of course the learned counsel for the appellant argued that the two are registered separately under the Factory Act, the two have been granted separate registration under the ESI and EPF Acts, the workers are separate in two factories and their service is not transferable. More over the service condition and applicability of standing orders are different. Hence both can not be treated as one company.

But this argument seems not convincing as it is noticed from the admitted facts that the two establishments are being run by the same Management with financial integrality. Hence they are to be treated as branches of one establishment for the purpose of The EPF&MP Act. The test has to be one as laid down by the Hon'ble SC in the case of Associated Cement referred supra.

Thus, for the discussion made in the foregoing paragraphs, no illegality is noticed in the impugned order passed by the Regional Provident Fund Commissioner, Faridabad.

ORDER

The appeal be and the same is dismissed. The order passed by the commissioner and impugned in this appeal is hereby confirmed and it is held that the establishment Wire Drawing Division is not entitled to the Infancy protection for 3 years as claimed. Consign the record as per Rules.

(Presiding Officer)