

**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. 403(4) 2014**

M/s. Kendriya Bhandar

Appellant

VS.

RPFC, Delhi

Respondent

**ORDER DATED:-10/01/2022**

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.  
None for the Respondent.

This appeal challenges the orders passed by the RPFC Delhi on 22/4/2014 of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs. 6,31,707/- u/s 7A of the Act, payable by the appellant establishment towards deficit PF dues of it's employees for the period 04/2006 to 03/2011. The plea of the appellant taken in this appeal is that it is an establishment established in the year 1963 pursuant to a union cabinet decision as a project for the benefit of the Government Employees and an employees' consumer cooperative society working for the welfare of the members. It is also covered under the provisions of the Act. Notice dated 07/08/2012 was served on the establishment to appear and participate in the inquiry to be held 23/08/2012 u/s 7A of the Act as it was noticed that there is deficit in deposit of PF dues for the aforesaid period. On the said day and thereafter the authorized representative of the appellant establishment appeared and produced all the relevant documents 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. The AR of the appellant establishment explicitly disputed the allegation of default or deficit in deposit. On account of that, the EO inspected the establishment and submitted the report on 27/12/2013. In his report the EO mentioned that the establishment is making deposit of the PF contribution of all the employees directly employed under it and has outsourced persons from other agencies. In respect of two agencies i.e M/S Shramik Kutir Udyog and M/S International Security of India there are some discrepancies seen and recommended for the inquiry in respect of Shramik Kutir Udyog. He, in the report also observed that payment made as per the bills raised to the principal employer does not reveal about the PF deduction. In doing so the EO took 60% of the bill as

wage and came to an erroneous calculation that PF contribution is payable on the same. The establishment during the inquiry raised serious objection to the same and pointed out that the bills raised by M/S Shramik Kutir Udyog were in respect of articles purchased from that organization and there exists no employer employee relation between the appellant and persons engaged by that organization and pf contribution is not payable on the purchase price mentioned in the Bills. But the commissioner without considering any of the submissions of the appellant passed the impugned order without identifying the beneficiaries and without assigning good reasons in support of his finding. 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 indirectly through a contractor or through an outside agency 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 principal employer owes the responsibility of remitting the PF dues of the employees at the first instance and recover the same from the bills raised by the contractor or the Agency. That having not been done in this case 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 RPF, 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 for non identification of the beneficiaries. He also argued that the payment was made to M/S Shramik Kutir Udyog, a voluntary organization run by the Railways Women's Welfare Central Organization. Kendriya Bhandar use to purchase the goods prepared by that organization and pay the price of the Goods as per the Bill. Hence there exists no employer and employee relationship between the appellant and the persons engaged in preparing the objects

purchased from M/S Shramik Kutir Udyog. No rebuttal argument was advanced on behalf of the respondent.

The photocopies of the statement of the PF paid for the relevant period and a statement of the bills paid to M/S Shramik Udyog have been filed along with the appeal. The Bills filed clearly shows that the Shramik Udyog was raising Bills for the articles sold to the appellant and receiving the price for the same. There is a difference between the sale and purchase price agreed between two parties and the charges payable by one party to the other for manufacturing and supply of Goods. Whereas the second instance would require PF deposit for the workers engaged for such manufacturing the first instance would not as there exists no employer and employee relationship directly or indirectly.

The other argument advanced by the appellant is with regard to non identification of the beneficiaries. The EO while submitting his report of inquiry had made least effort to identify the beneficiaries. Similarly the commissioner while discharging a quasi judicial function never summoned M/S Shramik Kutir Udyog to ascertain the beneficiaries. No explanation in this regard has been offered by the Respondent. The law is well settled that assessment under EPF &MP Act cannot 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 not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment made taking 60% of the Bill paid by the appellant to M/S Shramik Kutir Udyog as wage of it's employees. The Hon'ble SC in the case of Kranti Associates Pvt. Ltd vs. Sh. Masood Ahmed Khan and others, (2010)9 SCC 496, have held that

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of

reason of reasons or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the order not sustainable in the eye of law and entails to be set aside. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. The amount deposited by the appellant as a part of the assessed amount u/s 7O shall be refunded to the appellant within 60 days from the date of communication of this order.

Presiding Officer