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. D-2/06/2022

M/s. Satendra Nagar Proprietor

of M/s Om Enterprise Appellant

VS.

RPFC/APFC, Noida Respondent

ORDER DATED:- 29.03.2022

Present:- Sh. S.K Khanna, Ld. Counsel for the Appellant.

Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the prayer made by the appellant for an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Registry has pointed out the delay caused in filing the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri Narender Kumar representing the respondent participated in the hearing and raised objection to the prayer for interim stay.

The appellant has challenged the order dated 24/11/2021,passed by the RPFC Noida u/s 14B of the EPF &MP Act assessing Rs 9,09,746/-payable as damage on account of delayed remittance of PF Dues of it’s employees for the period3/2016 to 12/2019. Describing the same as an illegal order passed in a mechanical manner, the appellant has prayed for admission of the appeal and stay on the execution of the order. It has further been alleged that this is the second round of litigation in which the commissioner has passed the impugned order without application of mind in as much as no reason has been assigned for imposition of penal damage @100%. No finding has been given on the mensrea of the establishment for the delayed remittance and no discussion has been made on the mitigating circumstances leading to delay as pointed out during the inquiry. The learned counsel for the appellant also submitted that damage is leviable only when the establishment is found to have delayed the remittance with some ulterior intention. In this case the representative of the establishment had submitted a written submission along with all supporting documents describing the acute financial difficulty faced by the appellant establishment. Those mitigating circumstances were not considered at all by the commissioner during the inquiry. The jurisdiction of the RPFC I in deciding the matter has also been challenged in the appeal besides the stand that the calculation of the days of delay in remittance has been wrongly made in gross violation of the department circular issued after due approval by the Government of India granting 5 days grace period for making the deposit.

The learned counsel for the appellant thereby submitted that the appellant has a strong case to argue having fair chance of success. Unless there would be an interim order of stay on the recovery action on the impugned order, serious prejudice shall be caused and the relief sought for in the appeal will become illusory. He thereby argued for admission of the appeal by condoning the period of delay which has been allowed by the Hon'ble SC and an unconditional interim order of stay.

The learned counsel for the respondent by filing a written submission while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation. He also pointed out that the delay in remittance as evident from the calculation sheet is for more than three years. Moreover it is not the case of the appellant that for financial difficulties it had withheld the salary of it's employees. When the salary was paid every month, the appellant has to explain as to why the employees' share deducted was not deposited. He also submitted that withdrawal of the grace period was with the due approval by the chairman CBT vide 209th board meeting dated 24.11.2015. Since the appellant had omitted to discharge it's statutory obligation, the commissioner has rightly passed the order. He also submitted that mensrea being a state of mind need to be inferred from the circumstances of a case and the commissioner in this order has given a finding to that effect. The other submission of the learned counsel for the Respondent is that in view of the recent judgment of the Hon'ble SC in the case of **Horticulture Experiment Station, Gonikoppal, Coorg vs. RPFC Civil Appeal No. 2136/2012 decided on 23rd Feb 2022** the finding on mensrea is not the essential requirement for imposition of damage.

Perusal of the record shows that the impugned order was passed on 24/11/2021 and the appeal has been filed on 14/02/2022 i.e after the prescribed time under the Rules. Hence the office has raised objection. But for the order passed by the Hon'ble SC in the suo motto WPC no 23/2000 the delay in filing the appeal is condoned and the same is admitted. Another prayer has been made by the appellant praying stay on the execution of the impugned order.

Earlier for the same period an inquiry was conducted by the RPFCII and order dated 13/10/2020 was passed levying damage. The establishment had filed the appeal challenging the said order and this Tribunal at the stage of admission remanded the matter for fresh inquiry and consideration of the mitigating circumstances pointed out by the establishment and to render a finding on the mensrea of the establishment behind the delayed remittance. According to the said direction the impugned order has been passed.

Now a decision is to be taken on the interim relief of stay prayed by the appellant. The appellant canvassed that the CPFC after due approval from the Government of India has issued a circular allowing five days time period after the due date for making deposit of the contribution. This circular was issued on 12/01/2017. Earlier the Addl CPFC on 08/01/2016 had issued a circular without the approval of the Appropriate Government denying the grace period. The commissioner has followed the said earlier circular. He has filed a chart in the appeal memo showing the no of delays considered by the commissioner which in almost all instances are within the said grace period. He thereby argued that the order of the commissioner is devoid of reasoning and liable to be set aside at the end of the hearing. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time the tribunal is required to look in to the question of undue hardship likely to be caused to the appellant when such a plea is raised before it.

In this case the period of default as seen from the impugned order is for more than three years and the amount of damage assessed is equally big. The financial hardship pleaded by the appellant is on account of slow down of business and non clearance of Bills by the clients. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the assessed amount be protected from being recovered from the appellant since in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there would be an interim stay on the execution of the impugned order of damage pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 20% of the assessed amount of damage through challan within four weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after four weeks i.e on 05.05.2022 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer

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-2/10/2022

M/s. Sandha & Company — Appellant
Through Sh. J.R Sharma, Ld. Counsel for the Appellant

Vs.

RPFC- I, Gurugram — Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Arguments on the admission of the appeal heard and concluded. The Ld. Counsel for the Appellant submitted some documents related to the recovery done by the Respondent Authority. The Ld. Counsel for the Respondent also submitted one communication showing that the deposit of the amount mentioned in the impugned order was deposited voluntarily by the Appellant. Arguments concluded. List the matter on 12/05/2022 for pronouncement of order.

Presiding Officer

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-2/23/2019

M/s. Strucon Engineers Appellant
Through Sh. Dileep, Ld. Counsel for the Appellant

Vs.

APFC, Gurugram Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Arguments on the miscellaneous petition filed on behalf of the Respondent heard and concluded. List the matter on 07/04/2022 for pronouncement of order on the same.

Presiding Officer

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-2/06/2020

M/s. Zapdor Engineering Pvt. Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Noida Respondent
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

List the matter on 31/03/2022 for consideration of the application filed by the Ld. Counsel for the Appellant.

Presiding Officer

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-2/08/2018

M/s. Prowiz Mansystems Pvt. Ltd. Appellant
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Vs.

APFC, Noida Respondent
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

The Ld. Counsel for the Appellant submitted his written notes of arguments. Taken on record. List the matter on 09/08/2022 for final arguments by the Ld. Counsel for the Respondent.

Presiding Officer

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-2/21/2018

M/s. GNG Limited — Appellant
Through Sh. J.R Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Gurugram — Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Heard. Arguments concluded. Ld. Counsels for both the parties agreed to file written notes of arguments in this matter. Accordingly, list the matter on 23/05/2022 for pronouncement of order.

Presiding Officer

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-2/29/2019

M/s. Ascot Estates (Manesar) Pvt. Ltd. Appellant
Through None for the Appellant

Vs.

RPFC, Gurgaon Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Due to paucity of time the matter could not be taken up. List the matter on 09/08/2022 for final arguments.

Presiding Officer

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-2/06/2019

M/s. Flexo Foams Pvt. Ltd. Appellant
Through None for the Appellant

Vs.

RPFC, Gurgaon Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Issue notice to the Appellant for final arguments on 23/05/2022.

Presiding Officer

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. 621(4) 2013

M/s. Okara Roadways   Appellant

VS.

RPFC, Delhi (North)   Respondent

ORDER DATED:-29/03/2022

Present:- Shri S P Arora & Rajiv Arora Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the order dated 17/05/2013,passed by the RPFC Delhi north u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs. 18,15,416/- payable by the appellant establishment towards deficit P F dues of it's employees for the period 1/2009 to 8/2009. The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of transportation of Goods and materials. Notice dated 30/09/2009 was served on the establishment to appear and participate in the inquiry to be held 23/10/2009 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. The appellant had been very regular and diligent in making compliance of the statutory deposits .the Respondent having no evidence of default on the part of the appellant initiated the inquiry in respect of workers deployed for loading and unloading through contractors, in respect of accounting charges paid to independent professionals and in respect of the helpers employed in the Trucks by the drivers in their own capacity and making payment to them. The AR of the appellant establishment explicitly disputed the allegation of default or deficit in deposit. On account of that, the squad of the EOs inspected the establishment and submitted the report on7/5/2013. On the same day, the inquiry was closed and solely relying upon the report of the EO the impugned order was passed. In his report the EO mentioned that the establishment is making deposit of the PF contribution regularly in respect of all the employees directly employed under it. But for the workers engaged through contractors for loading and unloading, helpers engaged in trucks and the charge paid to persons engaged for accounting , there was no deposit.The EO took a wrong view of the matter 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 loader unloaders are the free lance workers registered under the Goods Transport Labour Board for Greater Bombay. It is borne on record that the establishment is regularly depositing the PF contribution of those loaders with the Board. During the inquiry the officials of the said board were summoned. On appearance, the said officials placed documents in proof of the deposit of the PF dues of the loaders and unloaders engaged for the period under inquiry by the appellant establishment. Even then the commissioner found the appellant establishment liable for deposit of PF dues payable on the total bills raised by the contractor after deducting the margin of profit and taking the rest as labour charges ignoring the fact that the said amount paid to the contractors also included the crane hiring charges. Not only that for payment made to different self employed persons towards accounting charges was considered to workout the non compliance. The helpers engaged by the drivers of the truck in their own capacity and making payment to them according to the work done and distance covered were treated to be the employees of the appellant and counting the no of trucks owned by the appellant assessment was made. Thus on three separate counts the commissioner made the assessment of unpaid PF dues and in respect of all such alleged default the commissioner made no effort of identifying the beneficiaries. The written submission of the establishment was not considered at all nor the basis of calculation was supplied. Over and above, without affording an opportunity to the establishment to dispute the squad report, on the same date of submission of the report closed the inquiry and passed the impugned order. While doing so the commissioner made an endorsement in his own hand writing on the margin of the typed proceeding dated 07.05.2013 that the establishment has no objection to the Squad Report which is false. Thus the appellant has pleaded that the commissioner in accepting the squad report in toto, passed the order without identifying the beneficiaries, which makes the impugned order illegal and liable to be set aside.

The respondent filed reply refutting the stand taken by the appellant. The main objection taken is that the employees employed indirectly through a contractor or through an outside agency or persons independently working for the appellant establishment and getting payment for the work done are the employees of the establishment and fall well within the definition of section 2(F) of the EPF and MP Act. It is also pleaded that under the provisions of section 8F read with Para 30 of the EPF and MP 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 of the Agency. That having not been done in this case the commissioner has rightly assessed the amount payable by the appellant. The respondent has also pleaded about the legislative intention behind the beneficial legislation i.e EPF and MP Act. The other argument advanced by the Ld. Counsel for the respondent is that when during the inquiry the appellant establishment had provided the name and other details of the helpers working in the truck, did not dispute the bills raised by the contractor for loading and unloading the goods, there was no need for identification of the beneficiaries.

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 IndiaVs.RPFC,1990LLR,64, SC** submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing the 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 by not identifying the beneficiaries. He also argued that the commissioner in a whimsical manner deducted a certain amount from the bills paid to the contractor as the margin of profit and took into account the rest amount as labour charges and calculated the PF liability on the same which is illegal. He also pointed out that the amount paid to the contractor on the basis of the bill raised by him included the rental charges for hiring the crane. The commissioner failed to appreciate that the said rental charges are not the wage paid to the labour as wage on which EPF contribution is payable.

He also argued that the EO while submitting his report of inquiry had made least effort to identify the beneficiaries and the commissioner while discharging a quasi judicial function never summoned the contractor or the helpers whose names were furnished by the establishment.

The law is well settled that the assessment of EPF dues cannot be made as if it is a liability under the tax laws. It is also 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 are 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.** Here is the case where the assessment has been made in 3 segments. Firstly the appellant has been held liable for the EPF subscription against the workers engaged by the contractors. Considering the submission made by the appellant during the hearing to the effect that in respect of loading and unloading charges paid to the labourers EPF subscription has already been deposited with the goods and transport labour board for greater Bombay, the commissioner had summoned them and it was confirmed that no EPF contribution is payable in respect of the loaders and unloaders as the same has already been deposited with the Board of Bombay. But the commissioner came to hold that the other labour charges paid to the contractors makes the appellant liable for deposit of PF dues. The appellant during the inquiry before the commissioner had submitted the written note stating that Rs. 3801469/- was paid to different contractors during the period of inquiry and each of such contractors were having 2 to 4 employees to whom they have paid loading and unloading charges and in respect of the same no PF due was deducted since the amount paid included hiring charges of cranes etc. However, the appellant during the inquiry agreed to deposit the Pf liability towards the employer shares only. But the commissioner as seen from the order in a hypothetical manner, solely relying upon the report of the squad calculated 3369,920/- as the wage paid to the workers adjusting margin profit of Rs. 4,31,549/-. He thus, calculated an amount of Rs. 8,63,036/- payable as the PF dues both employer and employee share. Here also the commissioner committed error by not identifying the beneficiaries.

The second segment of the calculation was with regard to the accounting charges paid to different persons whom the commissioner has held as not the professionals. On this head the commissioner found the establishment to have paid Rs. 34700 on which he calculated Rs. 8888/- payable as PF dues. The written submission of the establishment submitted during the inquiry explains that these persons are free lance workers and never the employees of the establishment. But the same was not considered at all. The other calculation made by the commissioner was in respect of the helpers working in the trucks owned by the appellant and the wage paid to them. The Ld. Counsel for the appellant submitted that the appellant establishment owns 118 trucks and commissioner in a fancy full manner came to a conclusion that 118 persons engaged in the said trucks are the employees of the establishment and calculated an amount of Rs. 943492/- payable as PF dues. Here also the commissioner omitted to consider the submissions of the appellant that no helpers were ever engaged by the appellant establishment. The drives of the truck on their own engaged the helpers and pay them from their own remuneration in accordance to the work done and distance covered. It is seen from the record that the establishment though furnished the names of the helpers, the commissioner made least effort to summon those helpers.

From the impugned order it clearly appears that for the objection raised by the appellant during the inquiry squad was constituted who verified the documents of the establishment. The said squad as reflected in the impugned order submitted its report on 07.05.2013 and on the same day the inquiry was closed. No opportunity was ever allowed to the establishment to raise objection to the squad report or to file rebuttal to the same. It is very surprising to note that the commissioner in his own handwriting had made an endorsement in the margin of the proceeding dated 07.05.2013 to the effect that the appellant has no objection for the squad report. Below this endorsement no signature of the appellant was taken. Now the appellant has taken a stand that it had never accepted the squad report.

In this case the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment taking an imaginary amount of profit on the bill paid to the contractor which included the hiring charges of the crane. The Hon'ble SC in the case of **Kranti Associates Pvt. Ltd. vs. Shri 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 or rubber stamp reason is not to be equated with a valid decision making process"

On the touchstone of the decided Principle of law discussed above, the impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the entire order not sustainable in the eye of law and entails to be set aside. During course of argument the tribunal was informed that the entire assessed amount has been deposited by the appellant due to the pressure created by the respondent. Since, the impugned order is liable to be set aside the amount deposited is liable to be refunded to the appellant. Hence, ordered.

ORDER

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

Presiding Officer

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.

<u>ATA No. 647(4)2013</u>

M/s. Om Appellant

VS.

APFC/RPFC, Delhi Respondent

<u>ORDER DATED:- 29.03.2022</u>

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri J.K. Sinha, Ld. Counsel for the Respondent.

This appeal challenges the order dated 29/08/2013 passed by the APFC Delhi under section 7A 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 not reported and not remitted for the period 2008-2009 w.e.f the last date of inspection. Challenging the said order and liability there under, 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 OM New Delhi is a commercial concern dealing with Garment manufacturing and sale. For getting the work done, it engages several contractors who are being entrusted to complete the works of different stages before a finished product is prepared. These works are basically the job works done by the contractors who are paid on piece rate basis and the appellant establishment is not aware, who are the persons engaged for accomplishment of the work. The appellant has thus pleaded that the commissioner without identifying the beneficiaries and solely basing upon the report of the AEO, made assessment taking into consideration 25% of total payment made to the contractors as the labour charges. This hypothetical assessment is illegal and liable to be set aside.

In his reply the learned counsel for the Respondent while supporting the impugned order, submitted that the AEO after verification of records produced by the establishment which were none but the salary/wage register, eligibility register, form 11 etc and also found that out of six employees found not enrolled during earlier inspection, four were enrolled and two were excluded employees as found from Form 11. But two more eligible employees were found omitted from being enrolled. Not only that the establishment was found to have made payment to the contractors on the basis of the bill raised by them. On the said bills 25% has been shown as labour charges. Thus the AEO submitted his report that the contractors not separately covered under the Act are not principal employers and the appellant establishment is responsible for deposit of EPF dues of the persons engaged through such contractors. He also submitted that calculation of 25%of the bill paid as labour charges for the purpose of PF contribution is not arbitrary but on the basis of the bills claimed by other contractors covered separately under the Act.

Perusal of the impugned order shows that the commissioner has assessed the contribution payable with reference to two separate accounts. One for the two non enrolled eligible employees and the second for the contractual workers engaged through the contractor having no separate code no. The appellant has taken a stand that the job work entrusted to the vendors are accomplished by engaging his own men and vendors are being paid on piece rate basis. Thus the appellant has no knowledge about the identity of the persons nor the no. of persons engaged by the vendors entrusted with the work. Hence the persons accomplishing the work for the vendor are not the employees of the appellant establishment and it is not liable for making PF contribution for them.

On behalf of the respondent the learned counsel submitted that the persons engaged directly or indirectly for the establishment are the employees of the principal employer for the purpose of compliance of the statutory liabilities under the Act. The plea of the establishment that it is not aware of the identities of the persons engaged by the vendor or non identification of the beneficiaries by the commissioner are not worthy of acceptance as the establishment has paid the bill to the vendor, may be on piece rate basis, but for the work accomplished by individual workers. More over no other document was produced during the inquiry to establish that the payment to the vendor was made exclusively on piece rate basis.

The appellant has not disputed the assessment made in respect of two omitted eligible employees. Sec 2(f) of the Act defines “employees means any person who is employed for wage in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wage directly or indirectly from the employer and includes any person engaged through the contractor” the dominant feature in the definition is that the persons must be working in connection with the work of the establishment and receiving wage from that establishment. Since the establishment has paid the bill raised by the vendor, the plea of none identification of beneficiaries making the impugned order illegal is not accepted.

Similarly the order of assessment cannot be termed as a guess work as 25% of the Bill paid has been considered as labour charge basing on the bills raised and paid to other contractor's in that rate.

Sec 7A of the Act lays down the mode of determination of money due from the employer. For this the authority may conduct an inquiry, as has been done in this case. The only stand taken by the appellant is that the workers working for the vendor are not his employees. While answering a similar question the Hon'ble SC in the case of **Hussain Bhaivs The Alath Factory,(1978 II-LLJ 397)** have held that the persons manufacturing Beedi and supplying to the manufacturer must be held to be the employees of the establishment having contract with the manufacturer to purchase the finished product. Not only that ,in the case of **P.M. Patel& Sons vs. Union Of India(1986-I-LLJ-88)** the Hon'ble SC have held that the home workers engaged by the contractors and engaged to work at different locations are employees of the establishment within the definition contained in sec 2(f) of the Act.

Judged by the above standard, persons engaged at different locations and accomplishing the task for production of the finished goods for the appellant establishment, though spread out at different places, fall under the category of workers who get their wages from the employer i.e the appellant even if they do not receive the same directly, but through the contractor retained by or in contract with the establishment.

In respect of this case the commissioner has given out the reasons in support of his finding. Thus on hearing the argument advanced by the counsels and considering the argument in the light of the judicial pronouncement referred in the preceding paragraphs, no illegality or infirmity is noticed in the impugned order entailing interference. Hence, ordered.

ORDER

The appeal be and the same is dismissed as without merit. The impugned order passed by the commissioner is hereby confirmed. Consign the record as per Rules.

Presiding Officer

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-1/25/2020

M/s. I.J.S Electronics — Appellant
Through Ms. Akanksha Narang, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (East) — Respondent
Through Sh. D.R Rao, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Arguments heard in part. Documents submitted by the Ld. Counsel for the Appellant. Taken on record. It is desired to call for the LCR for proper adjudication of the matter. List the matter on 31/03/2022 for continuation of the admission proceedings.

Presiding Officer

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.

<u>Appeal No. D-1/28/2019</u>

M/s. Dayal Singh Library Trust Society — Appellant
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (N) — Respondent
Through Sh. S.C Gupta, Ld. Counsel for the Respondent

ORDER DATED :- 29/03/2022

Arguments on the miscellaneous petition filed on behalf of the Respondent heard and concluded. List the matter on 07/04/2022 for pronouncement of order on the same.

Presiding Officer

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.D-1/01/2022

M/s. Vibhor Marketing Pvt. Ltd. Appellant

VS.

APFC/RPFC, Delhi, East Respondent

ORDER DATED:- 29.03.2022

Present:- Ms. Neha Shrivastava, Ld. Counsel for the Appellant.
Shri S.N Mahanta, Ld. Counsel for the Respondent.

The matter came up today for compliance of the direction given in the order dated 08.02.2022. The Ld. Counsel for the appellant pointed out that the tribunal while allowing the application filed u/s 7O of the Act directed for deposit of 30% of the assessed amount as a pre condition for admission of the appeal. The appeal has been filed challenging interim assessment of 43,91,434/- and final assessment of Rs. 1343741/-. Out of the same Rs. 37,14,915/- and Rs. 546558/- have already been recovered. In support of the contention she has filed a correspondence made by the RPFC to the recovery officer. The Ld. Counsel for the respondent Mr. Mahanta admitted that as against the impugned 7A assessment order 42,61,473/- has already been recovered. Thus, it is clear that an amount of in excess of the 7A amount impugned in the appeal has been recovered from the appellant establishment. Hence, it is felt proper to issue a direction to refund Rs. 40,14,622/- to the appellant and deposit balance 30% of the assessed amount which is 17,20,552/- in this tribunal in the form of FDR in the name of the registrar CGIT initially for a period of 1 year with the provision for auto renewal. Call the matter on 18.04.2022 for compliance of the direction by the respondent.

Presiding Officer