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.

Appeal NoD-2/21/2019

M/s.Mag Filters &EquipmentsPvt Ltd Appellant

VS.

APFC Gurugram Respondent

ORDER DATED –20/03/2023

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

This appeal challenges the orders dt 30.08.2018 and dt 15.07.2019, passed by the APFC Gurugram assessing Rs33,09,978/- and Rs 27,30,482/- respectively u/s 7A&7B of the EPF and MP Act 1952 (herein after referred to as the Act)payable by the appellant establishment towards deficit P F dues of it's employees for the period 04/2014 to 02/2018. The plea of the appellant taken in this appeal is that it is a Pvt. Ltd Company, engaged in the business has been allotted the PF Code No for compliance of the statutory deposit of it's employees. A squad of enforcement officers had visited the establishment premises on 15.01.2018 and submitted their report dt 25.01.2018, recommending initiation of inquiry in terms of sec 7A of the Act as they found default in PF contribution in respect of the allowances paid which well falls under the definition of basic wage and the statutory upper limit of basic wage has not been enhanced pursuant to the amendment of 2014, for depositing the contribution and an amount of Rs 30,57, 909/- is recoverable from the establishment for the period 04/2014 to 11/2017. As a result there of, the summon dated31.01.2018 was served on the establishment to appear and participate in the inquiry to be held 28.02.2018 u/s 7A of the Act. On the said day and thereafter the authorized representative of the appellant establishment appeared and took some time to file reply to the demand and produced all the relevant documents relating to

it's employees and the deposits made under the schemes of the Act. It is stated that 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 the excluded employees and the allowances paid to some of the employees meant to defray the expenditure. The AR of the appellant establishment explicitly disputed the allegation of default or deficit in deposit. On account of that, the EO was directed to inspect the establishment again. Accordingly the squad of the AEOsre inspected the establishment and submitted a report on 25/07/2018, working out the dues for the period 04/2014 to 02/2018 and recommended to enlarge the period of inquiry from 11/2017 to 02/2018. The commissioner while accepting the report of the EO for enlargement of the period of inquiry and the calculation of the dues payable, on the same day concluded the inquiry and reserved the matter for passing of the order. Thereby the appellant was denied the opportunity of disputing the amount calculated by the commissioner and his recommendation for enlarging the period of inquiry. Thereafter the commissioner passed the impugned order u/s 7A of The Act. Being aggrieved, the establishment, filed an application u/s 7B of The Act praying review of the order dt 30/08/2018. But the same was summarily disposed off without proper finding. Finding no other way, the appellant preferred an appeal challenging both the orders passed by the commissioner u/s 7A&7B of the Act. The appeal was registered as D2-26-2018. The Tribunal, by order dt 15/01/2019, remanded the matter for reconsideration of the Review petition. But the commissioner while ignoring the direction of the Tribunal, reopened the inquiryheld u/s 7A and passed a fresh order u/s 7B on 15/07/2019. In the second order the commissioner reduced the assessed amount to Rs27,30,482 as against the earlier assessment of Rs 33,09,978/- with the observation that assessment can not be made against the excluded employees as was done incorrectly in the earlier order. Being aggrieved by the orders passed u/s 7A&7B, the present appeal has been filed challenging the same as unreasoned and non speaking illegal order. It has also been stated that the APFC ,who was the member of the squad, which, by their inspection report dt25.01.2018 had recommended for the 7A inquiry, also conducted the inquiry in exercise of his power as a quasi judicial authority and accepted the report of the squad in toto, without rendering any finding as to why the allowances were treated as part of basic wage. No reason has been assigned for accepting the squad report nor any opportunity was granted to the

appellant to controvert the report of the EO submitted in the inquiry. He thereby pleaded for setting aside the order passed under7A and for not passing the order u/s 7B as directed by the Tribunal while remanding the matter.

The Respondent in it's reply, while supporting the impugned orders has stated that the assessment was never made in respect of the trainees and the establishment had not produced any document to prove that they are covered under the Apprentice Act. However the assessment made in respect of some employees were found to be excluded employees and during the assessment after remand by the Tribunal, the same was duly considered. The other stand taken by the respondent is that during the second round of inquiry, the persons employed through the contractors was also kept out of the scope of the inquiry. But the documents and records maintained by the establishment revealed that the establishment was making contribution on the basic wage only. But as provided u/s 6 of the Act, the contribution is payable on the basic wage, dearness allowance and the retaining allowance if any. But the establishment was found to have split the dearness allowance to various other allowances to avoid PF contribution. Thus the commissioner considered that aspect of the matter and passed a reasoned order which needs no interference.

Argument in detail was advanced by the counsel for both the parties. On behalf of the appellant the learned counsel Shri Khanna argued that the impugned order is a typical case of non application of mind by the assessing authority discharging a quasi judicial function. Neither he made effort of giving reason in support of his finding nor considered the fact that the establishment cannot be shaddled with the burden in respect of the allowances which was never paid to all the employees. He also submitted that the principles of natural justice were not followed in as much as the EO Report was not supplied to the appellant for examination and rebuttal. On the contrary the commissioner, in a haste, proceeded to conclude the inquiry on the date the EO submitted his report after verifying the records and reserved the matter to the pass the impugned order. Thus the appellant was denied the opportunity of disputing the second EO Report. He also pointed out the impugned order suffers from conflict of interest as the APFC who conducted the inquiry u/s7A was the member of the squad, which had made the inspection and recommended for initiation of the inquiry.

The learned counsel for the respondent during his argument mainly focused on the legislative intention behind the enactment and argued that the appellant being a big and established establishment should have been diligent in compliance of the statutory dues. But in this case the establishment failed to discharge the obligation to the detriment of the employees.

The impugned order, on a bare perusal shows that the commissioner has not recorded any reason driving him to the finding. He only accepted the report of the EO and concluded on the liability of the establishment. The impugned order also shows that the notice dated 31.01.2018 was served on the appellant establishment to defend it's case and to produce the documents. After some adjournments the EO was directed to verify the records of the establishment and submit his report. On 25/07/ 2018 the EO submitted his report working out the dues to be paid by the establishment and further recommended that the period of inquiry be extended to 02/2018 in stead of 11/2017 as stated in the notice earlier. There is mention in the order that the copy of EO Report was made available to the establishment who submitted the reply on 29/08/2018. The same was taken on record and the inquiry was adjourned for passing of the order. Thus the appellant has raised the question about violation of his legal right for denial of opportunity to argue on the report dt 25/07/2018.

But the learned counsel for the Respondent counter argued that the said report dt 25/07/2018 was prepared in presence of the appellant a copy was supplied and the establishment submitted the reply. Hence it can not be said that opportunity of rebuttal was ever denied.

The commissioner, as seen from the order, was inclined to accept the report of the EO to pass the order and there is no reference in the order with regard to the stand taken and explanation offered by the establishment. The impugned order is silent on the observation of the commissioner as to why he decided that the allowances to come under the fold of the basic wage.

Section 6 of the EPF&MP Act prescribes the components of salary/wage on which EPF contribution is required to be made and the proportion of the deposit by the employer and the employee.

According to this provision, contribution is required to be made on basic wage, dearness allowance and retention allowance. It has been explained that the dearness allowance shall be deemed to include the cash value of the food concession given to the employees. Further Para 29 of the EPF scheme in the exact line of the law laid u/s 6 of the Act and provides for contribution to be made proportionately at the rate of 10% on the basic pay, dearness allowance which includes cash value of food subsidy paid and retention allowance.

The learned counsel for the appellant has placed reliance in the case of Bridgr & Roof Co Ltd vs UOI, AIR 1963SC 1474 to argue that that the allowances in order to be treated as basic wage must be examined to find out the universality of payment of the same to all the permanent employees.

But in this case the commissioner has not rendered any finding at all as to why, the allowances were treated by him to be part of basic wage. Not only that the impugned order suffers from the non assignment ofreason as the commissioner has only accepted the two reports of the squad, one before the inquiry and the other submitted during the inquiry. There is no discussion at all about the pleas taken by the establishment in the written reply filed. The Hon'ble SC in the case of **Kranti Associates Pvt Ltd vsShMasood 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 pretense of reason of reasons or rubber stamp reason is not to be equated with a valid decision making process"

The impugned order besides not examining the universality of payment of the allowances, 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 orders passed u/s 7A 7B 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 by the EPFO within 60days from the date of communication of this order.

Presiding Officer