BEFORE THE HON'BLE 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.

M/s. Reliance Eminent Trading and Commercial Pvt. Ltd. — Appellant

Vs.

APFC, Faridabad — Respondent

ATA No. 481(16)2013

ORDER DATED:- 18.11.2020

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri Puneet Garg, Ld. Counsel for the Respondent.

The appeal challenges the notice issued by the RPFC Faridabad (in short The commissioner) dated 17.05.2013 directing recovery of Rs. 23,83,452/- from the Appellant establishment in respect of the dues of one M/s Injecto limited situated at Mathura Road Faridabad u/s 8B to 8G of the EPF and MP Act. The facts stated in the memo of appeal are that –the appellant is a company registered under the Indian Companies Act 1956. The original name of this company was Amazon enterprises Pvt. Limited which was subsequently with the permission of the registrar of the companies renamed as Reliance Eminent Trading and Commercial Pvt. Limited. This company on 07.08.2007 by a registered sale deed purchased a piece of land measuring approximately about 14233.33sq.yards on payment of due consideration from M/s Injecto Limited. The land being an industrial plot prior permission was also obtained from the appropriate authority for the said sale transaction. When the appellant/establishment was enjoying the said purchased land as the lawful owner, on 17.05.2013 received a demand notice from the recovery officer of the respondent demanding payment of Rs. 23,83,452/-. The said notice was issued by a recovery officer in exercise the power u/s 8B to 8G of the Act. The representative of the appellant on enquiry came to know that the said recovery notice has been issued as per the recovery certificate issued by the authorized officer u/s 14B and 7Q of the Act against M/s Injecto Limited. Since no demand notice was ever issued against the appellant, it raised an objection before the recovery officer and objected that the appellant could not be made liable for any dues of M/s Injecto Limited as by purchasing the piece of land the appellant/establishment had never acquired the establishment of M/s Injecto Limited. It was also brought to the notice of the recovery officer that the vendor Injecto limited has also executed an indemnity bond in favour of the appellant thereby given protection for any future liability to be created. Without considering the written objection filed by the appellant the respondent again issued another notice. The appellant on 22.05.2013 filed an application under RTI Act with the respondents seeking information and the details of the proceeding initiated by the authorized officer of the respondent against M/s Injecto Limited 14B of the Act. Thereafter another notice was issued by the respondent to the appellant on 10.06.2013 u/s 8B of the Act directing him to appear before the recovery officer. The information sought under the RTI when supply to the appellant, it could know that the proceeding under section 14B of the Act was initiated against the establishment M/s Injecto Limited in which an order dated 20.08.2002 was passed for a sum of Rs. 63,143/- only. Thereafter the appellant appeared before the recovery officer and filed the written representation challenging the demand notice served on it. The said representation was disposed of by the recovery officer observing that demand notice dated 17.05.2013 and the recovery proceeding cannot be challenged by the appellant and the recovery officer has no jurisdiction to entertain the same. The appellant has thereby pleaded that the establishment of M/s Injecto limited having not been acquired by the appellant the liabilities of the said establishment cannot be fastened on the appellant and the demand notice issued by the recovery officer is liable to be setaside. The appellant has placed documents like a demand notice and the order passed u/s 14B against M/s Injecto Limited for the perusal by the tribunal.

In reply the Ld. Counsel for the respondent submitted that the appellant is liable for suppression of the material facts and the recovery officer has rightly issued the demand notice against the appellant. Drawing the attention of the tribunal to section 17B of the EPF and MP Act he submitted that where an employer in relation to an establishment transfers that establishment in whole or in part by sale or otherwise, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provisions of this Act or Scheme, provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. In this case in the year 2002-2003 the establishment M/s Injecto limited was found defaulting in deposit of EPF dues. A proceeding u/s 7A was initiated and subsequently the proceeding u/s 14B and 7Q were also initiated for realization of the damage and the interest for the delayed remittance from. When the matter was pending for the recovery of the damage and the interest M/s Injecto limited transferred some of its assets to the appellant who under the provision of section 17B of the EPF and MP Act stands jointly or severally liable for payment of the said amount. The representation filed by the appellant before the recovery officer was considered and rightly rejected by a proceeding dated 18.07.2013 wherein it was made clear to the appellant that he cannot raise any dispute before the recovery officer challenging the recovery certificate issued u/s 8D of the EPF and MP Act. The Ld. Counsel for the respondent has further stated that the appellant at the time of purchase of the land from M/s Injecto limited in the year 2007 should have made proper inquiry of the liabilities of the later and the orders passed u/s 14B and 7Q of the Act. The appellant having not done so is liable to pay the liabilities of its vendor M/s Injecto limited. He thereby prayed for dismissal of the appeal.

On hearing the counsel for both the parties and on perusal of the record it is found that M/s Injecto limited was a company which had sold a piece of land belonging to the said company to the appellant establishment by a registered sale deed on payment of due consideration and after obtaining permission from the appropriate authority for alienation of industrial plot. After such purchase the appellant became the lawful owner of the property and got the same mutated in its name by HUDA and Faridabad Municipal Authorities. As an abundant caution the purchaser i.e. the appellant got one indemnity bond executed in its favour by the seller protecting the purchaser against all liens, attachment and encumbrances etc. By filing the copy of the sale deed and the other collateral documents the appellant submitted that the sale was transacted in the year 2007 in respect of the patch of land and not the establishment M/s Injecto limited was ever acquired. Hence the liability of M/s Injecto limited cannot be fastened on the appellant. During the pendency of the appeal the appellant also filed an affidavit stating that the recovery notice was issued for damage of 738727 and interest of 1641025 payable by the establishment M/s Injecto limited. The information obtained under RTI has also been filed which shows that the establishment having name M/s Injecto limited is still an active business house running its own business. On the basis of these documents the Ld. Counsel for the appellant submitted that no evidence has been placed on record by the respondent authority to prove that M/s Injecto limited has been closed and the establishment has been transferred in favour of the appellant designating the later as the employer of M/s Injecto limited for the purpose of EPF dues.

In reply the Ld. Counsel for the respondent argued and submitted that the provisions of law laid u/s 17B of the EPF and MP Act clearly provides that where an employer in relation to an establishment transfers that establishment in whole or in part by sale or otherwise, the person to whom the establishment is so transferred shall stand jointly and severally liable to pay the contribution and other sums due from the employer under any provision of this act. Hence, in this case the appellant who purchase the land from M/s M/s Injecto limited in the year 2007 is liable to pay the damage and interest assessed against M/s Injecto limited in the year 2002.

The argument advanced by the Ld. Counsel for the respondent doesn't sound convincing since the provision of section 17B clearly provides that the liability is created on the transferee if the establishment is transferred in whole or in part and the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. In this case there is no evidence at all to believe that the establishment of M/s Injecto limited was transferred to the appellant i.e. the erstwhile Amazon Enterprises Pvt. Limited renamed as Reliance Eminent Trading and Commercial Pvt. Limited. The sale deed of the year 2007 has been placed on record by the appellant which shows that only a piece of land pertaining to the industrial plot no.6, sector 6, 20/5 faridabad Haryana measuring 14233.33 sq. yards was only transferred in favour of the appellant. There is no description in the sale deed about any factories structure or establishment standing over the said land sold. Thus, from this it cannot be concluded that the appellant by virtue of the purchase of the land had acquired the establishment of the vendor M/s Injecto limited so as to become the employer in respect of the said establishment and take up the liabilities of the PF dues. Moreover in this case no opportunity was ever given to the appellant establishment to set up its defence against the proposed liability. The appellant was directly served with a demand notice and the representation made by him was rejected by the recovery officer on the ground that the establishment cannot challenge the recovery process and he has no jurisdiction to deal with the same.

A similar question was raised before ht Hon'ble High Court of Uttrakhand in the case of U.A Transport Corporation vs. EPFO in WP NO. 87,263,265 and 267 of 2005. The Hon'ble Court examining the documents placed and the argument advanced came to a conclusion that in exercise of the power u/s 17B an opportunity should be given to the employer of representing his case. Unless such an opportunity is given, no recovery action directly cannot be taken against the establishment acquiring the assets.

Hence, on a careful analysis of the matter and the documents placed on record it is held that the appellant who only purchased a piece of asset in the nature of a piece of vacant land cannot be held to have acquired the establishment of M/s Injecto India is still functional and running its own business so as to stand in the footing of employer of M/s Injecto Limited and take the liabilities of the later in respect of the PF dues. Furthermore, u/s 8B of the Act it has been provided that where any amount is in arrear, under the provision of section 8 the authorized officer may issue, to the recovery officer, a certificate specifying the amount of arrear and the recovery officer, on receipt of such certificate, shall proceed to recover the amounts specified therein from the establishment or as the case may be from the employer by one or more of the modes mentioned under the provision. This clearly shows that the recovery officer on receipt of the certificate specifying the amount of arrear from the authorized officer, shall first of all proceed to recover the amount specified therein from the establishment or from the employer by one or more of the modes. In this case the appellant is not the establishment against whom 14B and 7Q was initiated nor it is the employer who owes to discharge the liability. Hence it is held that the notice issued by the recovery officer against the appellant establishment is illegal and liable to be setaside. Hence, ordered.

ORDER

The appeal be and the same is allowed on contest and the recovery notice dated 17.05.2013 and 10.06.2013 u/s 8B is held to be illegal and set aside.

Sd/-
Presiding Officer