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EPF – DISPUTED DEMANDS & ATTACHING ACCOUNTS

A. Background

Apparently relying on the Supreme Court’s judgment in *Vivekananda Vidyamandir* case,¹ Enforcement Officers in the Employment Provident Fund Organisation (“**EPFO**”) are issuing notices to many employers calling for wage registers, employment records *etc.* This inevitably is followed by:

1. High-value demands by including all allowances, incentives and bonuses in computing contributions under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (the “**EPF Act**”).
2. Letters to the employers’ banks directing attachment of the accounts and payment to EPFO.

This *Connect* attempts to highlight certain vexing legal issues around such demands and directions.

B. Incorrect Demand

A plain reading of Section 7A (*Determination of moneys due from employers*) makes it evident that this section is focused on dispute relating to applicability of the EPF Act to an establishment, along with decision on the disputes and determination of due amounts. It is rather perplexing that the Regional Provident Fund Commissioners (“**RPFCs**”) proceed to issue demand notices under this section on employers whose establishments are already covered by the EPF Act.

C. Incorrect Claims

1. Disallowing Allowances: In these demand notices, the RPFCs include all allowances, incentives, and bonuses for determining contribution demands. Such a brushstroke approach will be in complete disregard of the EPF Act¹ as well as of a catena of judgments of the Supreme Court and various High Courts.
2. Including Left Employees: Demands for employer contribution even with respect to employees who have separated from their employer are also made. The RPFCs ignore the fact that they are not tax adjudicators and their demand is not one of a tax, which is a “compulsory exaction”² that goes into the Consolidated Fund of India. Here, EPFO is a social security organisation that provides a service to its members. It is duty bound to collect contribution only for its members and not to those who are no longer members as on the date of a demand.

¹ Section 2(b) and Section 6 of the EPF Act.

² “A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.” - *Mathews v. Chicory Marketing Board (Vic)* (1938) 80 CLR 263 and relied by our courts.

3. Including New Employees: Where an employee was drawing salary lower than the wage threshold for EPF purposes,³ demand is raised by the RPFC adding a portion of allowance(s) to fill the gap between the basic salary and the wage threshold. This is done completely ignoring the fact that if an allowance is included to basic salary, the entire amount of allowance must be included, resulting the employee to ‘exempted employee’⁴ and no contribution can be demanded once the statutory ceiling limit is crossed.

D. Conclusion

In its zeal to inflate Section 7A demand amounts, the settled legal positions are conveniently ignored in the demand notices. Once a demand is raised, claim for damages and interest⁵ will inevitably follow. Thereafter, Order of Attachment⁶ is issued to the banks of the employer resulting in the business of the employer coming to a grinding halt.

To compound this issue, the Employees’ Provident Fund Appellate Tribunal⁷ (“**EPFAT**”) is now replaced by Central Government Industrial Tribunal (“**CGIT**”).⁸ Many CGITs are practically non-functional since members are not appointed by the Government. An appeal to the tribunal also requires mandatory pre-deposit of 75% of the demands.⁹ As such, no relief can be expected from the tribunal forcing the aggrieved employers to rush to high court to invoke its writ jurisdiction.

Despite the EPFO issuing circulars/guidelines¹⁰ on the strict procedure for Section 7A demands and expressly prohibiting “*roving inquires/investigations*,” this mechanical process of raising incorrect and hyped-up contribution demands by the RPFCs, followed by coercive recovery actions through attaching of bank accounts continue unabated. As significant amounts are being claimed, employers may consider reviewing such notices carefully in the context of facts applicable to their business to respond suitably in having the demands withdrawn.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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³ Paragraph 2(f) of the Employees’ Provident Fund Scheme, 1952.

⁴ Sections 2(ff) and 17 of the EPF Act.

⁵ Sections 7Q and 14B of the EPF Act.

⁶ Section 8F of the EPF Act.

⁷ Section 2(m) read with Section 7D of the EPF Act.

⁸ Sections 158 and 159 of the Finance Act, 2017. CGIT [Website](#).

⁹ Section 7O of the EPF Act.

¹⁰ [Circular](#) dated 28th August 2019 and [Guidelines](#) dated 14th February 2020.

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