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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 450/2015**

**REGIONAL PROVIDENT FUND
COMMISSIONER**

..... Appellant

Represented by: Mr.Keshav Mohan, Advocate with
Ms.Amrita Narayan and Mr.Piyush
Choudhary, Advocates

versus

**M/S SEIL FOODS AND FERTILIZER
INDUSTRIES & ANR**

..... Respondents

Represented by: None

LPA 452/2015

**REGIONAL PROVIDENT FUND
COMMISSIONER**

..... Appellant

Represented by: Mr.Keshav Mohan, Advocate with
Ms.Amrita Narayan and Mr.Piyush
Choudhary, Advocates

versus

**M/S SIEL FOODS AND FERTILIZER
INDUSTRIES & ANR**

..... Respondents

Represented by: Mr.Sanjeev Narula, CGSC with
Mr.Ajay Kalra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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17.07.2015

CM No.12448/2015 in LPA No.450/2015

CM No.12461/2015 in LPA No.452/2015

Allowed subject to just exceptions.

CM No.12449/2015 in LPA No.450/2015

CM No.12462/2015 in LPA No.452/2015

For the reasons stated in the applications the delay in filing the appeals is condoned.

LPA Nos.450/2015 & 452/2015

1. Having heard learned counsel for the appellant in the two captioned appeals we find no merit in the two appeals in view of the law declared in the decisions noted by the learned Single Judge, which pithily stated would be that the definition of employee as per Section 2f of the Employees Provident Fund Act excludes employees working for third parties which are rendering some kind of service to the party sought to be charged with the liability for provident fund under the act. A finding of fact has been returned by the Appellate Tribunal which has been concurred to by the learned Single Judge that the respondent in the two appeals had entered into contracts with transporters for transportation of its material on assignment basis. The transporter used to send a truck whichever was available at the time when the goods had to be transported and the truck would be driven by a driver and there used to be a cleaner/attendant on the truck. It was not a case where workmen were supplied by any agency to the respondent for plying the trucks of the respondent. It was not a case where the driver and the cleaner were the same each time when the consignments were transported. It was not a case where the driver and the cleaner worked exclusively for transporting the goods of the respondent. Learned Single

Judge has noted as many as three judgments on the subject drawing a distinction where the facts showed employment of workman through a contractor for the exclusive works of the parties sought to be charged with the liability under the Act vis-a-vis the party sought to be charged with liability under the Act having a contract with a transport firm for transporting its goods as and when required and hire charges to be paid and the persons plying the truck being the employees of the transporter and not exclusively transporting the goods of the person sought to be charged with the liability under the Act. The corollary of said finding would be that no bonus would be liable to be paid to any employee of the transporter.

2. The appeals are dismissed.
3. No costs.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

JULY 17, 2015
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