15.05.2026.
Item No. 19.
Court No. 13
ap/AP

M.A.T No. 638 of 2026
With
I.A. No. CAN 1 of 2026
And
I.A. No. CAN 2 of 2026

Regional Provident Fund Commissioner & Ors.
Versus
Durga Engineering Works

Mr. Ujjwal Datta.
...For the appellants.
Mr. Victor Chatterjee,
Ms. Shreeja Bhattacharjee,
Ms. Pramitava Nath.
...For the respondent.

Re: CAN 1 of 2026 (Condonation)

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about 136 days in filing the instant appeal.

2. Having heard the learned Advocate appearing on behalf of the appellants as also considering the statements made in the said application, this Court is satisfied with the grounds indicated therein, as sufficiently explaining delay of 136 days in filing the instant appeal.

3. In view of the above, the application for condonation of delay being CAN 1 of 2026 is allowed and disposed of.

4. There will be no order as to costs.

Re: M.A.T. 638 of 2026

5. The instant intra court appeal is directed against the judgment and order dated 11th September, 2025 passed by a learned Single Judge of this Court in W.P.A. 2709 of 2016.

6. The writ petition was filed by the Establishment challenging an order dated 30th September, 2014 passed by Employees' Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 497(15)2004.

7. The subject matter of A.T.A. No. 497(15)2004 was an order dated 17th March, 2004 passed by the Employees Provident Fund Organization under Sections 14B and 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The Establishment also claimed the benefit of Section 16(1) clause (d) for the period from 1st April, 1994 to 31st March, 1997.

8. In respect of the proceedings before the Tribunal, the learned Single Judge found certain violation of the provisions of natural justice, inter alia, that the appeals of the Establishment were not listed in the cause list of the Tribunal on the date when hearing was stated to have been concluded.

9. The Single Bench also found that the EPFO had refused the benefit of Section 16(1)(d) of the Employees' Provident Fund and Miscellaneous

Provisions Act, 1952 since it refused to accept that the Establishment of Durga Engineering Works as an independent entity.

10. The case of the Establishment of Durga Engineering Works before the EPFO and the Tribunal was that it had separated amicably and mutually from the partnership business of Punjab Engineering Works sometime in 1994. The manufacturing activity of the two emerging entities since 1994 is completely different from the other. Durga Engineering Works is engaged in the manufacturing of cold drawn bright steel bars of different shapes. New workmen had been engaged by Durga Engineering Works since it setting up with effect from 1st April, 1994. The Punjab Engineering Works continued to function as a separate Establishment which manufactured oil mill machinery and its spares.

11. It is submitted that the Punjab Engineering Works functions out of premises No.32, Ramkrishna Samadi Road, Kolkata – 700054 having its manufacturing unit at village - Nandankanan, Post- Ganganagar, District- 24-Parganas (North). The manufacturing unit of Durga Engineering Works was in a portion of the same premises as that of Punjab Engineering Works.

12. It is submitted that the allotment of Sub-Code No. WB/CA/417A to Durga Engineering Works was

erroneous. Durga Engineering Works ought to have been given an independent EPF Code from that of Pubjab Engineering Works, which had a Code No. WB/417.

13. It was also argued that the Durga Engineering Works had separate WBST and CST (now GST) number and filed separate profit and loss account. It was also submitted that the workmen engaged by Durga Engineering Works were new recruits in the year 1994. No damages or interest or penalty could be levied for initial period of three years from 1994 in view of Section 16(1)(d) of the Act of 1952.

14. This Court notes that while several decisions relied upon by the Single Bench to the effect that division of properties and businesses by partition of a partnership business will not entitle the Establishment to avoid payment of PF dues. Despite whereof the Single Bench afforded the benefit of Section 16(1)(d) of the Act of 1952 to the establishment.

15. This Court notes that the Single Bench committed error in accepting the arguments of the Establishment in the absence of an appropriate finding of fact. There are no reasons recorded by the Single Bench for accepting the arguments of the establishment.

16. This Court finds that the grounds on which the first authority EPFO rejected the claims of the

Establishment are completely different from the grounds on which the Tribunal did not find favour with it.

17. The assertion by the Tribunal of certain facts was a precurser to the EPFO and the Tribunal applying the law thereon. The Single Bench, therefore, has applied law on disputed questions of fact.

18. It is also well settled that a Writ Court under Article 226 of the Constitution of India does not enter into the disputed questions of fact. In the face of a grievance of violation of natural justice and erroneous application of law the Single Bench ought to have remanded the matter back to the Tribunal to come to an appropriate finding of fact first and then permitted the Tribunal or the first authority to pronounce upon law and entitlements thereunder.

19. The Single Bench could not have straightaway found in favour of the Establishment under Section 16(1)(d) of the Act of 1952 without assigning sufficient reasons therefor.

20. Hence the impugned order dated 30th September, 2014 and the order in A.T.A. No.497(15) of 2004 passed by the Employees Provident Fund Appellate Tribunal, New Delhi are liable to be set aside and the said appeal restored to the file of the EPFAT now located in Kolkata.

21. The Establishment shall be entitled to file appropriate affidavit and prove the basic facts in support of its claim for the benefit of the hitherto existing Section 16(1)(d) of the Act of 1952 and make appropriate submission, in fact and law. The EPFO may file a suitable objection thereto.

22. It is after receiving affidavits as above and after hearing both the sides that the Appellate Authority shall pronounce upon the admitted facts and the case law relied upon by both the sides. The Establishment as well as the EPFO shall take note of the decisions referred to by the Single Bench.

23. It is expected that the aforesaid proceedings remanded for reconsideration by the Appellate Tribunal as directed hereinabove, are completed within a period of three months from the date of receipt of a copy of this order.

24. The sums deposited by the Establishment with the Registrar General of this Court together with interest shall be made over by the Registrar General to the EPFO at Kolkata upon notice to the Establishment of the exact sum credited.

25. The EPFO shall during the subsistence of the appeal before the Appellate Tribunal keep the sums received from the Registrar General together with accrued interest in an interest bearing account in its own name, and notify the Establishment. The said

deposit with the EPFO shall abide by the final decision of the Appellate Tribunal in A.T.A. No.497(15) of 2004.

26. Accordingly the decision of the Single Bench dated 11th September, 2025 shall stand set aside.

27. With the aforesaid observations, MAT 638 of 2026 is allowed and disposed of.

28. In view of the disposal of the appeal itself, the connected application being CAN 2 of 2026 is also disposed.

29. There shall be no order as to costs.

30. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)