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Tele: 011-26172671
Fax: 011-26189910

कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय भारत सरकार)
Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय/Head Office

भविष्य निधि भवन, 14 भीकाजी कामा भवन, नई दिल्ली 110066

Bhavishya Nidhi Bhawan, 14- Bhikaiji Cama Place, New Delhi – 110066

No. 7(1)2012/RCs Review Meeting/ 245

Date 30th November 2012

All Additional CPFCs
All Regional PF Commissioners
All Assistant PF Commissioners

Subject:- Guidelines for Quasi-judicial proceedings under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act 1952 – regarding

Sir/Madam

The quantum and quality of assessments under the Act have been an area of concern. After conclusion of Zonal Reviews in the month of August 2012, a Working Group of senior officers was constituted for suggesting the necessary correctives. Accordingly, instructions as detailed below are being issued for streamlining and standardizing the area of assessments under the Act. These guidelines are meant for the Compliance functionaries, before and upto the initiation of the quasi-judicial enquiry. Certain other procedural advisories are also being issued.

2. **INITIATION OF INQUIRY** - Inquiries should be initiated only after actionable and verifiable information is placed for consideration of the compliance officers. Following could be the source information for initiation of enquiries: –

- A system generated report of probable and/or actual defaults based on receipts/remittances position of the establishments.
- Mapping of individual establishments regarding the amount remitted as well as the number of employees for whom the establishment is remitting the dues. Any variation, positive or negative, greater than 10% over the average receipts/members of the establishment may prompt an investigation.
- Verifiable complaints or information received from general public at large may be another source for initiation of investigations and/or enquiry.
- Reports submitted by the Enforcement Officers.

3. For facilitating the Compliance Officers, complete compliance history of the establishment shall be made available on-line. It shall *inter-alia* contain following:-

- Amount remitted and the number of employees for whom the establishment is complying.
- On clicking the number of members, a randomly sorted list of names of members for whom compliance has been reported by the establishment during the month should be available. This list shall not contain either the PF account number or the PF balances of the members.

- c) Compliance history of the establishments, wherein, details such as pending quasi-judicial enquiries, pending recovery certificates, pending legal cases in respect of a particular establishment etc. be made available.

{ACC(C) & ACC(IS) to ensure that the same is made available on epfindia portal on priority}

- 4. The Compliance Branch in each of the field offices shall have two broad divisions, viz
Compliance (Administration) – to investigate and report on complaints, defaults, remittance status etc.
Compliance (Judicial) – exclusively for conducting enquiries under the Act.

{ACC(Zones) to ensure that the same is done on priority, ACC(C) to monitor the same.}

5. **PROCEDURE FOR INITIATION OF ASSESSMENT INQUIRY-**

- a) Information received about default will be entered in a Central Register to be maintained on a central server.
- b) On receipt of the information notice shall be issued to the establishment enclosing the information on the basis of which the instant notice has been issued. If the establishment accepts the contents of the notice, then the matter may be verified for further necessary action.
- c) If no response is received then the EO shall be advised to investigate and file a report in the matter. The investigation report of the EO shall be according to the "Form of Inspection Report to be submitted by the Enforcement Officer for each Unexempted Factory/Establishment Visited" as issued vide EPF headquarters circular number Vig.XXV(02)2000/3017 dated 4th August 2010 (at serial number 170, Office Orders/Circulars – 2010-11).
- d) The Compliance (Administration) shall examine the investigation report submitted by the EO and decide whether any case is made out for initiation of quasi-judicial enquiries.
- e) If, on the basis of the report of the EO, it is decided that it is a fit case for initiation of enquiry under section 7A of the Act, then the report of the EO and observations there on of the Compliance (Administration) shall be forwarded to the Compliance (Judicial) branch for initiation of an enquiry under section 7A of the Act by the Assessing Officer.
- f) Before recommending any case, the Compliance (Administration) shall specifically verify, whether any report/record is available on the file indicating the status of the establishment, i.e. whether it is a closed establishment etc.
- g) Complete investigation report should be available on record before initiation of inquiry is recommended by the Compliance (Administration). In cases where the complete report is not received the Compliance (Administration) shall record reasons in writing for initiating the proposal for the said enquiry.
- h) Except under abnormal circumstances, no inquiry shall be initiated unless a prima-facie case exists on the basis of the said report.
- i) The Assessing Officers shall, on receipt of the report from Compliance (Administration) open a separate file for conducting the quasi-judicial enquiry. This file shall start with the issue of summons for conducting enquiry under section 7A. The enquiry shall be deemed to have initiated only if proof of service of notice is available on record.
- j) The 7A notice shall be accompanied by the documents on the basis of which an enquiry is proposed to be conducted. A copy of draft notice is attached (**Annexure A**) for reference.
- k) The 7A summons shall be for a specific period i.e. the notice shall not be an open ended notice and a specific period of default should be compulsorily mentioned in the notice.
- l) It should be compulsorily ensured that the notice has been served on the establishment against whom an enquiry is proposed to be initiated before any further action is initiated for conducting a formal enquiry.
- m) If during pendency of 7A enquiry further default is noticed, either another summon be issued to the establishment for extending the period of current 7A enquiry or a fresh 7A enquiry be initiated..

- n) During the enquiry a departmental representative should lead the case of the Department. This is a legal requirement and is to be compulsorily insured.

6. **ORDER OF ASSESSMENT** – The Act mandates that the orders issued by any assessing officer shall be a “speaking order”. Accordingly, to ensure that the orders so issued, do not suffer from any procedural infirmity, an indicative structure of the assessment order is appended. **(Annexure B)**

7. **ACTION TO BE TAKEN AFTER COMPLETION OF INQUIRY** - After completion of enquiry the 7A file shall not be merged with the enforcement file. Every order issued under section 7A by the Assessing Officer shall be examined by the Compliance (Administration) to ascertain whether a case exists for filing an appeal against the said order

8. **LUMP-SUM ASSESSMENTS** - The problem of lump-sum assessments happens mostly in contractor establishments and in establishments employing workers of migratory nature having short-term project-based employment in various establishments. The lump-sum assessments happen because the default detection and the subsequent compliance action take place much after the occurrence of default. Further, the employer is either unwilling or unable to provide details of its employees, when so required during the course of 7A enquiry. Accordingly, following instructions are being issued to regulate such assessments:-

- a) The establishment shall file returns and remittances of its employees (whether regular or contractual) through ECR.
- b) If the establishment has, on its rolls, employees who are deputed to other establishments on contractual basis, then the EPF code number of the establishment to which the said employee(s) have been so deputed shall be mentioned in the ECR. For this purpose an additional column shall be made available in the ECR.
- c) There shall be no assessment without identifying individual members in whose account the fund is to be credited.
- d) If the employer or unable or unwilling to submit requisite details, action under Section 14, 14A, 14AA, 14AB and 14 AC of the Act shall be initiated.

9. **MULTI LOCATION ESTABLISHMENTS**

- a) In cases where such establishments are filing returns and remittances at a single location, this information shall be made available to all the Regional Commissioners for the purpose of ensuring compliance under the Act.
- b) The Regional Commissioner under whose jurisdiction one or more than one unit of such multi – location establishments is physically situated shall cause periodic inspection of such establishments and make available the inspection report through a function of upload to be provided on epfindia portal.
- c) The compliance position as available from the return and remittances submitted by the establishment and as emerging out of actual inspection of the branch/branches of the establishment shall be available in a consolidated manner at one central location to the Regional Commissioner under whose jurisdiction such establishments are reporting compliance and who shall, if required, cause an assessment enquiry under relevant provisions of the Act.
- d) The inspection report of such establishments shall be according to the “Form of Inspection Report to be submitted by the Enforcement Officer for each Unexempted Factory/Establishment Visited” as issued vide EPF headquarters circular number Vig.XXV(02)2000/3017 dated 4th August 2010 (at serial number 170, Office Orders/Circulars – 2010-11).

10. **LIMITATION FOR INVESTIGATION/INQUIRY**- It has been observed that open ended assessment inquiries and investigations serve no real purpose. Moreover such inquiries often do not result in identification of beneficiaries and only tend to harass the employers and establishments. It is accordingly directed that no inquiry or investigation shall ordinarily go beyond seven years, i.e., it shall cover the period of default not exceeding preceding seven financial years. It is to be ensured that

compliance actions are initiated in time and there is normally no reason for extending the scope of investigation and assessment enquiry beyond previous seven financial years.

11. In case any specific verifiable complaint or information exceeding this period is received then the inquest may go beyond seven years. Following may be an indicative list of documents which shall be required for taking the inquiry/investigation beyond seven years:-

i) If the complaint is from an employee, following may be considered:-

- a) Appointment letter
- b) Pay slip
- c) ID Card
- d) ESI Card
- e) Copy of bank account statement indicating the credit of salary etc from the employer.
- f) Any document issued by employer to the employee.

ii) If the complaint is from a trade union/ association regarding non-coverage, then inter-alia any of following may be considered :-

- a) Electricity Bill of the establishment.
- b) Sales Tax registration of the establishment.
- c) Any other document issued by any other Government or public body.

12. **SPLITTING OF WAGES** - Basic wages by its own definition encompasses all the payments except the specified exclusions. All such allowances which are ordinarily, necessarily and uniformly paid to the employees are to be treated as part of the basic wages. The confusion in definition of wages (and hence the issue of splitting of wages) primarily arises from the expression "**commission or any other similar allowance payable to the employee**" in Section 2(b) (ii) of the Act as "**commission**" and "**any other similar allowance**" are read as two separate expressions and hence "**any other allowance**" is read as an omnibus exclusion, thereby encouraging the subterfuge of splitting of wages to exclude the PF liabilities. The expression "**commission or any other similar allowance payable to the employee**" is one continuous term meaning commission or any other "commission" like allowance by whatever nomenclature referred. Thus "basic wages" is subject to exclusions expressly referred to in the above definition and no other.

Yours faithfully



(R.C. MISHRA)

CENTRAL PF COMMISSIONER

Copy for information and necessary action to:-

1. FA & CAO
2. CVO
3. Director (NATRSS)



(P.K. UDAGTA)

ADDITIONAL CENTRAL PF COMMISSIONER (C)

ANNEXURE A

To

Notice under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS upon consideration of the records and documents particulars whereof are given in the Schedule 'A' hereunder written and also the report of the Enforcement Officer of this Department dated _____ I am prima facie of the opinion that in spite of applicability of the Provident Fund Act and the Scheme framed there under, _____ to _____ your _____ establishment _____ namely M/s _____

Code No _____, you have failed and neglected and/or evaded payment of Provident Fund dues in respect of the persons employed by you having Provident Fund membership / persons employed by you and have not been made member of Provident Fund in violation of the provisions of the aforesaid Act and the Scheme, particulars whereof are given below:-

(Specify in short the nature and basis of claim based upon the report and the documents available)

AND WHEREAS I, _____ Regional Provident Fund Commissioner / Assistant Provident Fund Commissioner am empowered under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to make enquiry and determine the amount due from your establishment under the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, Employees' Provident Funds Scheme, 1952, Employees' Pension Scheme, 1995 and the Employees' Deposit Linked Insurance Scheme, 1976.

The undersigned proposes to make enquiry and determine the amount payable by your establishment upon consideration of the aforesaid documents, report and your response and reply if any, submitted by you.

You are hereby given a reasonable opportunity of representing your case as provided under Section 7A(3) of the Act and you are requested to show cause and/or give explanation and/or submit your representation, response and reply to this notice along with all the relevant documents and particulars upon which you intend to rely upon for the judicious determination of the amount payable by your establishment within days.

The copies of the report dated (dd/mm/yyyy) of Mr./Ms _____, the Enforcement Officer of Provident Fund Department which is self explanatory, and also the documents/records referred to, in Schedule 'A' hereunder are enclosed herewith to give you an opportunity for representing your case and to enable you to give your representation, response and reply to this notice for judicious inquiry and fair determination of the subject matter of this notice.

Please take notice that if you fail to give your representation and/or reply to this notice, I shall proceed to hold the enquiry in the aforesaid matters, ex-parte, on merits and order shall be passed upon consideration of the available records and documents determining the amount due from your establishment under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, Employees' Provident Fund Scheme, 1952, Employees' Pension Scheme, 1995 and Employees' Deposit Linked Insurance Scheme, 1976, hereunder.

Issued under my seal and signature at this date of (dd/mm/yyyy)

Regional / Assistant Provident Fund Commissioner

Schedule 'A'

- 1.
- 2.
- 3.
- 4.
- 5.

Encl : Documents referred to in Schedule 'A' and the Inspection Report referred to above.

STRUCTURE OF THE ASSESSMENT ORDER (PARA 6)

Sub-Head	Details
Basic Introduction of the establishment	This part may include basic introduction of the establishment like Code No. etc,
Background of the 7A	This part may include basic reasons for initiation of 7A and details of specific documents summoned at the time of initiation of enquiry.
Appearance During the enquiry	This part may include persons appearing on behalf of the establishment, appearing on behalf of the department and complainant, if any. This part should also include only the specific dates of hearing. Thus a bare perusal of the order would show the number of opportunities provided to the establishment as well as appearances during the enquiry. The service of summons to the establishment/complainant should be specifically recorded by the Assessing Officer in this part of the enquiry report.
Records produced during the enquiry	This part may mention in detail a list of records produced by the establishment /E.O./Complainant during the enquiry. At the same time, if complete set of records are not produced by the establishment/complainant as summoned, a comparative summary of records not produced despite summons/notices can be mentioned in this part.
Information as per records produced	This part of the assessment order may only give statement of facts (and not opinion/analysis etc) as appearing in the records produced by the establishment/complainant/ union/E.O. etc.
Submission of the establishment:	This part may elaborately record submission made by the establishment during the enquiry.
Submission of the Complainant, if any	This part may include submission of the complainant, if any, in detail
Submission of E.O	This part may include details of view point of the EPFO represented through E.O.
Deliberation recorded in the Daily Order Sheet	Any specific event/issue recorded in the Daily Order Sheet or any serious development during the proceeding should find mention in this part, so as to highlight the intent of the establishment/complainant before any Appellate Forum/Court, if required. However, normal routine developments like adjournments, next date etc should not be recorded in this part.
Rule Provision	This part of the order may specifically contain rule provisions as appearing in Act/scheme. No analysis of rule provision should be mentioned in this part.
Analysis of facts/evidence vis-a vis rule provisions	This part may contain the analysis of the facts and evidences produced before the assessing officer vis-a-vis relevant rule provision quoted in preceding paragraphs. This part may deal with each and every aspect of facts/evidence raised by either establishment/E.O or complainant if any. The reasons for reaching a particular conclusion may be specifically highlighted in this part. The reasons for accepting/rejecting either establishment or E.O. or complainant's submission may also find specific mention in this part of the order.
Finding based upon analysis of facts/evidence vis-a-vis Rule provisions	This part may record findings of the Assessing Officer with respect to each issue raised during the proceeding. Since the basis of arriving at any conclusion is already mentioned in the preceding part, repetition of the same may not be required at this stage.
Order	This part may contain details of the final order i.e. either assessment or decision regarding applicability. In case of assessment, however, since the enquiry period is specific, in order to avoid any kind of confusion, the amount determined must be mentioned as A. total amount due for the period, B. amount already deposited and C. residual amount due from the establishment. However, it is only the residual amount that should be reflected as Amount due from the establishment.