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To
Mr. Soham Modi,
Managing Director,
Modi Properties and Inv. Pvt., Ltd.,
M.G.Road, Secunderabad.

Sub: Legal Opinion in respect of the Judgment of Hon'ble Supreme Court,
With regard to coverage of employee at construction site.

Ref: Order passed by the Honorable Supreme court in S.L.P .No CC: 8035 of 2016 dated 2nd
May, 2016.

Given hereunder is the legal opinion for your query.

Query No:1

The Honorable Supreme Court while dismissing S.L.P. CC No: 8035 2016 on 2nd May 2016 recorded the contention of the management , that without identifying the beneficiary workmen, the contribution is being sought, without identification, the management will not be liable to make the contribution and the process of identification will arise only at the stage of enquiry and held " Therefore it is made clear during the process of enquiry conducted by the E.P.F. Organization, the steps will also be taken to identify the workmen either of the petitioner or engaged through the contractors. Needless to say that the E.P.F organization will ensure that the contribution taken from the company will actually go to the benefit of the employee concerned" and sought my opinion about the impact, interpretation and implementation of the judgment.

OPINION:

As per the judgment of the Honorable Supreme Court referred above, the Honorable Court directed the E.P.F organization to identify the workmen either employed by the Principal employer or by /through the contractor at the time of enquiry in respect of coverage and demand for payment of contribution to ensure that the claim be confirmed only to the extent of the identified employees who has been physically identified at the time of enquiry and the no claim can be made against the coverage of the employees who are not working at the time of enquiry and whom the E.P.F Organization cannot identify during the enquiry to ensure the contributions so paid by the employers should go only to the employees.

The employees who are working in the organization at the time of enquiry and who can be identified by the E.P.F Organization can only covered and the organization can only demand payment of contributions only against such employees who have been identified but not for any other employee.

Query No:2

Can P.F. Department make demand for payment P.F. based on Books of Accounts without identifying the Beneficiaries as per the aforementioned judgment or not?

No. As per the aforementioned judgment, the P.F. Department need to identify the beneficiaries before making the demand and not on mere verification of books of accounts, since the Honorable Supreme Court categorically held that the E.P.F Organization will ensure that the contribution taken from the employer will actually to the benefit of the employees concerned.

I hope your query is clarified, if not feel free to seek further clarifications, if any

As regards my earlier opinion dated 23.06.2016 I was informed by your officials that the the subject matter of the aforementioned judgment of Hon'ble Supreme Court pertains to E.S.I. Organization and more in the said judgment it was only mentioned respondent organization but no mention whether it was E.S.I. or E.P.F. Your officials also could not clarify. However upon online verification of the judgment, in L. P.A. No: 728 of 2014 by logging into the Website of Hon'ble Delhi Court I found that the case was filed against the P.F. Department and that the other respondents mentioned in the judgment was P.F. Department. Accordingly I have amended my earlier legal opinion dated 23.06.16 and replaced the E.P.F. Wherever I have mentioned E.S.I. You are requested to make note of the same.

The aforementioned judgment shall not have any application in respect of E.S.I. Contribution.

M. Radha Krishna Murthy,
Advocate

Sir,

We need clarification for the below mentioned query:

In the past P. F. Department raised a demand for payment of PF based on the Books of Accounts. In light of the Supreme Court order can P.F Department make demands for payment of PF & ESI based on Books of Account without identifying the beneficiaries of the levy.