

CHAPTER I: MINISTRY OF CHEMICALS AND FERTILIZERS

The Fertilizers and Chemicals Travancore Limited & Madras Fertilizers Limited

1.1 Excess contribution to employees' provident fund

The Fertilizers and Chemicals Travancore Limited and Madras Fertilizers Limited made employer's contribution to provident fund at a rate exceeding the prescribed rate of contribution resulting in excess payment of ₹18.50 crore.

The Employees' Provident Funds (PF) and Miscellaneous Provisions (Amendment) Act, 1988, effective from 22 September 1997, revised the rates of employer's contribution to provident fund from 8.33 *per cent* and 10 *per cent* of wages to 10 *per cent*¹ and 12 *per cent*² respectively. In terms of Government of India (GOI) notification³ dated 09 April 1997, the increased rate was not applicable, *inter alia*, to the following establishments:

- (i) A sick industrial company which has been declared as such by the Board for Industrial and Financial Reconstruction (BIFR)
- (ii) An establishment which had, at the end of any financial year, accumulated losses equal to or exceeding its entire net worth and also suffered cash losses.

Audit observed that the accumulated losses of the Fertilizers and Chemicals Travancore Limited (FACT) had exceeded its net worth in March 2013. During the years 2013-14 to 2016-17, the accumulated losses of FACT continued to remain in excess of its net worth and the Company also suffered cash losses. Madras Fertilizers Limited (MFL) was declared (April 2009) as a sick company under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 by BIFR. MFL continued to remain a sick company as of 31 March 2017. Thus, both the companies were required to make employer's contribution to provident fund at the concessional rate of 10 *per cent* instead of 12 *per cent*. These Companies, however, continued to make contributions at the enhanced rate of 12 *per cent* which resulted in excess contribution of ₹12.66 crore by FACT during the period 2013-14 to 2016-17 and ₹5.84 crore by MFL during the period 2010-11 to 2016-17.

The Management of FACT replied (September 2017) that the increased rate was being continued to maintain the peaceful industrial relations. Further, limiting of provident fund contribution to 10 *per cent* was an enabling provision for sick/loss making companies and was not a mandatory provision. The Management of MFL replied (October 2017) that the PF Act did not prohibit a sick company to contribute at 12 *per cent*, and the Company had

¹ As per Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act), the lower rate of employer's contribution (*viz.* 10 *per cent*) was applicable in respect of all establishments other than those covered under the first proviso to Section 6

² The first proviso to Section 6 of the Act provided that the Central Government, after making such enquiry as it deems fit, may, by notification in the Official Gazette specify, that the rate of employer's contribution in respect of an establishment or class of establishments shall be 12 *per cent* instead of 10 *per cent*

³ This notification was issued in exercise of the powers conferred by the first proviso to Section 6 of the Act

consciously taken decision to continue with the contribution at 12 *per cent* in view of its policy to make contributions at a rate equal to the employees' contribution.

The replies of the Companies need to be viewed against the fact that the increased rate of employer's contribution was not applicable to the sick/loss making establishments in terms of GOI's notification (April 1997). The said notification was issued by the Government in exercise of the powers conferred by the first proviso to Section 6 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. As such, the same was required to be followed.

The matter was referred to the Ministry in November 2017; their reply was awaited (February 2018).