

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2,**  
**MUMBAI**

**APPEAL NO. CGIT- 2/EPFA135/2019**

**M/s. Saboo Sarees,**  
Standard House,  
83 Queen Road,  
Marine Lines,  
Mumbai- 400 002.

- Appellant

V/s.

**The Regional Provident Fund Commissioner**  
Bandra (Mumbai-I),  
Employees Provident Fund Organization,  
341, Bhavishya Nidhi Bhawan,  
Bandra (East), Mumbai,  
Maharashtra- 400 051.

- Respondent

**ORDER**

(Delivered on 25-02-2025)

The present appeal u/s. 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as, "the EPF Act"), has been filed by M/s. Saboo Silk Emporium challenging the legality and propriety of order dated 23.10.2019 passed u/s. 14-B & 7-Q of the EPF Act.

**2.** The appellant engaged in the business of trading in clothes and dress materials. It is a partnership firm of two partners. By CODE DRAFT LETTER dated 10.06.2014, the establishment of the appellant was covered under the EPF Act. As per the scheme unless and until the code number is allotted, contribution of Provident Fund cannot be deposited and the respondent accepted the payment of contribution online through password allotted by the

department after 2012. The respondent by show cause notice dated 23.06.2016 directed to pay the amount of Rs.3,46,552/- towards Damages and Rs.2,23,393/- towards Interest. That notice was replied by letter dated 24.11.2016 and 29.07.2017 and thereby clarified that, the CODE DRAFT LETTER was issued in 2014 as such amount cannot be remitted prior to that period. There was no intentional delay. Thereafter there was no proceedings in respect of claim of Damages and Interest, however without considering the reply and the decisions of High Courts and the Supreme Court, the Authority passed an order in mechanical manner on 23.10.2019 and thereby determined the amount of Rs.1,64,849/- and Rs.82,822/- towards Interest. That order dated 23.10.2019 is the subject matter of the present appeal.

The appellant contended that, there was a circular issued by CBT in the meeting held on 03.12.2023, in which it was observed that no damages shall be levied for the pre-discovery period. The said guidelines were operating during relevant period as such determination of Damages and Interest for the pre-discovery period is wrong and improper. There was no mens-rea nor intentional delay while remitting amount of contribution to the department. The company was covered from 2014, however coverage was preponed in arbitrary manner to the year 2007, without offering the personal hearing and levying Interest and Damages on the basis of preponed coverage is malafide and bad in law. The appellant further contended that, there was no ill intention on their part, hence the levying of Damages and Interest was improper and unwarranted. As per settled law, no damages and interest is payable for pre-discovery period. Determination of Damages of Rs.1,64,849/- for the

period February 2007 to March 2012 and claiming Interest of Rs.82,882/- for the period February 2007 to March 2012 suffers from grave error on the face of record and scheme framed thereunder. The order under appeal is contrary to law and the same has been passed without application of mind. It is in gross disregard to prevailing law of land and patently perverse, thus the applicant prays for setting aside the orders under appeal with equitable relief and adjust the amount if any.

3. The respondent resisted the appeal by counter reply, denied all the contentions of the appellant in totality. The respondent submitted that, the establishment of the appellant is covered under the EPF Act vide CODE DRAFT LETTER dated 10.06.2014 w.e.f. 01.04.2006 and the appellant had deposited P.F. dues for the period from 02/2007 to 03/2012 belatedly, therefore summons dated 23.06.2016 was issued for the delayed remittance during 01.04.2014 to 30.09.2014 for default period from 02/2007 to 03/2012 for Damages of Rs.3,46,552/- and Rs.2,23,393/- towards Interest. During enquiry it was pointed out that, the appellant has already remitted Rs.1,81,703/- towards Damages and Rs.1,40,511/- towards Interest for the period 02/2007 to 02/2009, thus remaining balance payable u/s. 14-B by levying an amount of Rs.1,64,849/- towards Damages and Rs.82,882/- towards Interest for the period from 01.04.2014 to 30.09.2014.

The respondent further submitted that, the benefits of pre-discovery period has been withdrawn by EPFO by circular dated 13.02.2009 and the Authority has instructed that after 16.02.2009 in all cases Damages should be levied as per Sec.14-B of the EPF Act, therefore there is no illegality in the order

passed by the Authority and the same is logical and legal, thus there is no question of setting aside the same and requested for rejection of appeal.

4. I have heard Mr. Manoj Gujar advocate for the appellant and Mrs. K. Sawant advocate for the respondent. The following points arise for my determination, my findings and reasons to them are as below-

#### **POINTS**

#### **FINDINGS**

1. Whether the order under appeal

suffers from illegality?

Yes.

2. Whether the applicant is entitled

for relief as prayed?

Yes, partly.

#### **REASONS**

**5. Point No. 1-** Mr. Manoj Gujar Learned Advocate for the appellant, submitted that, by CODE DRAFT LETTER dated 10.06.2014, the respondent allotted code number u/s. 2-A of the EPF Act and covered the establishment of the appellant under EPF Act w.e.f. 01.04.2006 and subsequently covered under EPF Act w.e.f. February 2007. Unless and until the code number is allotted, contribution amount cannot be deposited with the respondent and the respondent was accepting the contribution online through password allotted after 2012, as such unless and until code number is allotted the compliance cannot be made. Still the respondent by summons S/C notice dated 23.06.2019 demanded the damages of Rs.3,46,552/- and Rs.02,23,393/- towards interest for the period from February 2007 to March 2012. The S/C notice was replied and the respondent was also informed about coverage from 2014.

He further submitted that, Central Board Trust (CBT) in the meeting held on 03.12.2003, it has been decided that “no damages shall be levied for the pre-discovery period, where the code number was allotted belated by the EPFO”, accordingly the circular was issued in the year 2004 as such the period from February 2007 is pre-discovery period therefore the respondent cannot claim any damages for the pre-discovery period. He also submitted that, there was no intention to delay in remittance of contribution nor mens-rea. The coverage was pre-poned in arbitrary manner without offering personal hearing, therefore levy of damages for pre-discovery period are illegal & improper. The reliance has been placed on the various decisions in **Mcleod Russel India Ltd. v/s. RPFC 2014 11 CLR 847 (SC)**, **Central Board of Trustee v/s. Sanjay Maintenance 2017 11 CLR 25 (BHC)**, **Cable Corp of India Ltd & Anr. v/s. Union of India & Anr. 2006 SCC Online Bom 765**, **Poona Shims Pvt. Ltd. v/s. B.P. Ramaiah, RPFC 2007 1 CLR 492**, **Arcot Textile Mills Ltd. v/s. RPFC (2013) 16 SCC 1**, **Calcutta High Court in Writ Petition No. 21454 (W) of 2010 M/s. Kanchrapara, Harnett English Medium School represented by Chairman v/s. RPFC and Ors.**

6. Mrs. Sawant learned counsel appearing on behalf of the respondent strongly contended that, the appellant remitted the contribution of P.F. from February 2007 to 25.09.2014 belatedly, therefore the damages and interest have been claimed as per S/C. notice/summons dated 23.06.2016. She further submitted that, the circular issued in respect of pre-discovery period was withdrawn by EPFO vide circular dated 13.02.2009, therefore the appellant cannot claim benefits of circular in respect of late remittance of P.F. contribution alleging pre-discovery period. She also submitted that,

financial difficulty and mens-rea are not relevant for belated remittance of P.F. contribution. She put her reliance on the various decisions in **Organo Chemicals Industries & Anr. v/s. UOI (1979)**, **Hindustan Times Ltd. v/s. UOI (1998)**, **Avon Scales Company v/s. RPFC (1993) I LLJ 216**, **RPFC v/s. S.D. College Hoshiarpur 1996 CJ (SC) 1430**.

7. After carefully scanning the oral submissions advanced on behalf of the parties, in the light of their respective pleadings and copies of documents available on record, there appears no dispute that, by CODE DRAFT LETTER dated 10.06.2014, code number was allotted to the establishment of the appellant w.e.f. 01.04.2006. There is no mentioned in the CODE DRAFT LETTER issued by the respondent that, the same was issued on the basis of application made by the appellant, therefore it is certain that the establishment of the appellant was covered under EPF Act on the basis of visit made by the Enforcement Officer.

8. It reveals that, though the establishment of the appellant was covered under the EPF Act w.e.f. 01.04.2006, however the respondent nowhere mentioned that, the contribution of P.F. from 01.04.2006, was not remitted by the appellant. Moreover for the delay in remitting the contribution of P.F., the respondent issued S/C. notice/summons to the appellant on 23.06.2016 and thereby claimed damages and interest from February 2007 to 25.09.2014 and thereby claimed damages of Rs.3,46,552/- and Rs.02,23,393/- towards interest.

9. It has come on record and not much disputed that, on the basis of the meeting Central Board Trust (CBT) held on 03.12.2003, circular in 2004 was issued and as per circular, no damages shall be

levied for pre-discovery period, however the counsel for the respondent submitted that, the said circular was withdrawn by EPFO by another circular dated 13.02.2009, therefore the appellant cannot take the benefits of earlier circular issued by EPFO in 2004.

**10.** The learned counsel for the appellant invited my attention to the decision of **Calcutta High Court in W.P. No. 21454 (W) of 2010 M/s. Kanchrapara, Harnett English Medium School represented by Chairman v/s. RPFC and Ors.**, in the matter before Hon'ble Lordship, by memo dated April 23, 2007 allotted a code number to the establishment and the petitioner was directed to pay the Provident Fund dues for the period beginning from June 16, 1993 upto the date of the issuing of that letter within a period of 15 days, in which it has been appreciated that,

“The circular records that, the Central Board of Trustees had decided that no damages should be levied for the pre-discovery period when the code number was allotted belatedly and where the establishment was prevented from remitting the contributions in absence of code number and thus to bring about a uniformity of approach by different field offices and to alleviate the difficulties experienced by the establishments a certain guidelines were issued in the matter of levy of damages in respect of the establishments covered belatedly.”

**11.** As regards withdrawal of circular by EPFO, it has been further appreciated that,

“This exemption was subsequently withdrawn prospectively by a notification dated February 13, 2009. The word prospectively appears to have been very consciously used in the subsequent

notification. If the Provident Fund Authorities had meant to levy damages in respect of the pre-discovery period as well the authorities could make it very clear or atleast would not have mentioned the word prospectively. Withdrawal of the earlier notification prospectively clearly means that, the establishments would be required to pay damages only with effect from the date of the withdrawal of the earlier notification. The Provident Funds authorities have abused their power by issuing notice upon the petitioner asking to them to pay damages ignoring the true import of the earlier notification and in the process, it had also not appreciated that a benefit conferred upon an establishment by a notification could not be taken away by a subsequent notification and that too in respect of a period which was covered by the earlier notification. The respondents have, thus, failed to appreciate the true import of the subsequent notification and have improperly demanded damages from the petitioner.”

It is clear from the above observation of the High Court that, the appellant is entitled for the benefits of circular issued in 2004 atleast till the withdrawal of that circular in 2009 prospectively.

**12.** Though, it is contended on behalf of the appellant that, the circular was issued as per the direction of Central Board Trust (CBT) however the same was not withdrawn by the Central Board of Trust and the officer of EPFO was not right to withdraw the said circular, however in view of the observation of the High Court Calcutta relied by the appellant, in which the withdrawal of circular prospectively by EPFO was accepted thus, I do not think it necessary to go into the rights of EPFO in respect of withdrawal of circular.



**13.** In the case in hand, admittedly the respondent has claimed the damages from February 2007, however the CODE DRAFT LETTER was issued on 10.06.2014, therefore this period is pre-discovery period and as per circular of 2004 issued by EPFO and subsequently withdrawn by another circular dated 13.02.2009, as such the period from February 2007 to 13.02.2009 is pre-discovery period and as per circular issued based on the direction of CBT coupled with the decision discussed above, the respondent cannot claimed damages for the pre-discovery period till 13.02.2009. In short, the damages cannot be claimed from February 2007 to 13.02.2009.

**14.** The learned counsel for the appellant also submitted that there was no deliberate delay nor malice as well as mens-rea in depositing the contribution of P.F. late. Similarly, there was financial difficulty also however this aspect was not considered by the authority while assessing the damages.

**15.** I have gone through the various decisions relied on behalf of the appellant in **Mcleod Russel India Limited**, it has been appreciated by the Apex court that, the presence or absence of mens-rea and/or actus reus would be a determinative factor in imposing damages under Sec. 14-B, as also the quantum thereof since it is not inflexible that 100 percent of arrears has to be imposed in all the cases, if the damages have been imposed under Sec. 14-B, it will be only logical that mens-rea and/or actus reus was prevailing at the relevant time. The same has been observed by our **Bombay High Court** in **2017 II CLR 25** that, the presence of absence of mens-rea and/or actus reus would be a determinative factor in imposing damages u/s. 14-B of the EPF Act. Similarly, it

has been also appreciated that, if the damages have been imposed under Sec. 14-B, it will be only logical that, mens-rea and/or actus reus was prevailing at the relevant time.

In the decision of **Poona Shims Pvt. Ltd.**, our Bombay High Court, it has been appreciated that, P.F. authorities cannot seek to levy damages for defaults which have occurred for their own lapses and the action smacks of malafides and demonstrates high handedness of the respondent. In that matter, the code number was not allotted immediately. In **M/s. OCS Group India Pvt. Ltd.**, it has been appreciated that levying damages are at exorbitant rate and not considering the effective amendment in the provision.

**16.** I have gone through the various decisions relied on behalf of the respondent, in **Organo Chemical Industries**, it has been appreciated by the Apex Court of the land that, the default on the part of the employer based on pleas of power cut, financial problems relating to Other indebtedness or the delay in realization of amounts paid by cheques or drafts cannot be justifiable grounds for employer to escape liability. Similarly in **Hindustan Times Ltd.**, it has been held that there is no period of limitation prescribed by the legislature for initiating action for recovery of damages u/s.14-B unless prejudice to shown by the employer.

**17.** In **Avon Scales Company**, it has been appreciated that, the explanation of the employer that contribution could not be deposited in time because the firm was not running smoothly on account of labour trouble, strike, slow down and tool down, financial loss did not find favour with the commissioner as statutory obligation which cannot be allowed to be diluted by such extraneous factors.

**18.** In **S.D. College Hoshiarpur**, it has been appreciated that, the employer is under a statutory obligation to deposit the amount to the credit of the fund every month. In the event of any default committed in that behalf Section 14-B steps in and calls upon the employer to pay damages by way of penalty, the maximum of which is the accumulated arrears. The Regional Provident Fund Commissioner is given discretion only to reduce a percentage of damages and he has no power to waive penalty, There cannot be any quarrel about the ratio laid down in those decisions. Moreover the decision of Supreme Court in **Organo Chemical Industries** is of prior to amendment to Sec.14-B of the EPF ACT and the same was considered in the decisions relied by the appellant. The aspect of limitation is not all relevant in the present matter and in **S.D. College Hoshiarpur**, it has been observed that, the commissioner can reduce percentage of damage and no power to waive penalty.

**19.** In the case in hand, it has been rightly pointed by the counsel for the appellant that, the respondent commissioner claimed damages for pre-discovery period, assessed maximum damages by ignoring the fact that delay in depositing the contribution is unintentional.

**20.** It is clear from the show cause notice dated 23.06.2016, the respondent has claimed the damages from February 2007 and in the order under appeal, the authority assessed the same amount of Rs.01,64,849/- towards damages, however I have observed that, the appellant is not liable for damages for pre-discovery period more particularly from February 2007 to February 2015. Similarly the maximum damages have been awarded, therefore the order under

appeal suffers from illegality, hence I answer this point in the **affirmative**.

**21. Point No.2-** It appears that the respondent has claimed the damages from February 2007 and I have observed that, the appellant is not liable to pay damages for pre-discovery period based on circular of the respondent at least till withdrawal of circular dated 13.02.2009 and in the light of fact about the closure of establishment, the appellant is liable to pay 70% as assessed in the order. It seems that, at the time of admission of appeal, my predecessor vide its order dated 30.12.2019 directed the appellant to deposit 10% amount of assessed in the order and the amount of interest was certainly paid as such the appellant is directed to pay 60% amount towards damages to the respondent. In short, the appellant is entitled for relief partly.

In the result, I pass the following order-

### **ORDER**

The Appeal is allowed.

The appellant is hereby directed to pay/deposit 60% of amount assessed in the order under appeal within a period of 6 weeks from the date of order, if not paid earlier and excess amount if any paid by the appellant be adjusted.

No order as to costs.

Sd/-

Date: 25-02-2025

(Shrikant K. Deshpande)  
Presiding Officer  
CGIT -2, Mumbai

