

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**  
**CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,**  
**JABALPUR**

**NO. CGIT/LC/EPFA-159/2017**

**PRESENT: P.K.SRIVASTAVA**  
**H.J.S.(Retd.)**

**M/S Durgesh Caterers**

**APPELLANT**

**Versus**

**The Asstt.Provident Fund Commissioner**  
**Jabalpur (M.P.)**

**RESPONDENT**

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**Shri Uttam Maheshwari** : Learned Counsel for Appellant.

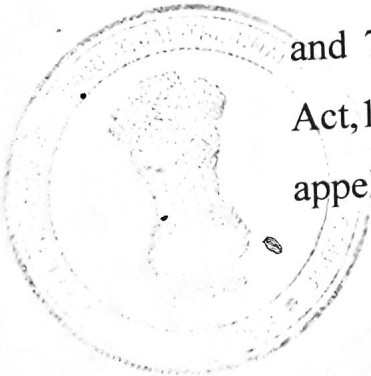
**Shri J.K.Pillai** : Learned Counsel for Respondent.

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**(J U D G M E N T)**

**(Passed on this 7<sup>th</sup> day of January-2022 )**

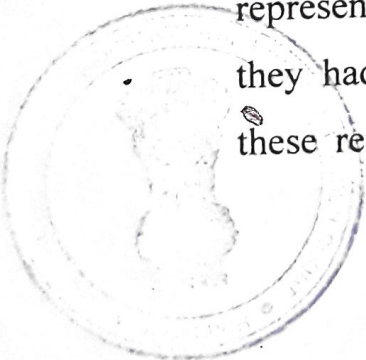
1. This appeal is directed against the composite order of Respondent Authority dated 2-9-2015 passed under Section 14-B and 7-Q of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word "Act", holding the appellant guilty for late deposit of employees provident fund dues of



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its employees within the period 07-2008 to 07-2012 and 08-2012 to 12-2013 and imposing penalty/damages under Section 14-B of the Act to the tune of Rs; 4,85,851/- and interest under Section 7Q of the Act Rs.2,64,421/- thereby directing the appellant establishment to deposit total Rs.7,50,272/- within 15 days from the date of receipt of the impugned order.

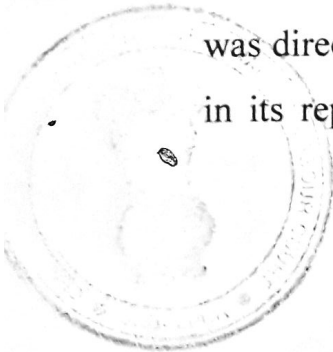
2. . Facts connected, in brief, are that the appellant establishment is engaged in providing/catering man power employees to various governmental organizations. It is covered under the Act and has been allotted a separate employees provident fund code. After assessment, the Respondent Authority held the appellant establishment liable to pay the employees provident fund dues of its employees within the period July-2008 to July-2012 which was Rs.8,37,316/- vide its order dated 26-11-2012 passed under Section 7A of the Act. The Appellant complied with this order and deposited the employees provident fund dues after receipt of this order. Thereafter a separate notice for depositing interest and penalty/damage was issued by the Respondent Authority and the Respondent Authority proceeded to inquire about the interest and penalty for late deposits. It is the case of the Appellant that they appeared in response to the composite notice under Section 14-Q and 14-B of the Act and filed their written representation/submissions on 30-4-2015 and 16-8-2014 wherein they had challenged the notice on various grounds mentioned in these representations. The Respondent Authority sought a report



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from the department in the light of these representations. The Department filed its report/submission/representation dated 28-7-2015. It is further the case of the appellant that they were not served with a copy of this report of departmental representative/office. They were not given opportunity to file their objections on this report and the Respondent Authority relied on this report in recording the impugned finding and passing the impugned order, thus committed error in law by violating the principles of natural justice. It is further the case of the Appellant Establishment that since they deposited the amount, assessed under Section 7A, they cannot be saddled with the responsibility of depositing interest and penalty of so called late deposits and for this purpose the order of assessment shall be treated as due date as mentioned in the Act. According to the Appellant, the impugned order suffers from illegality on the point of fact and law and requires to be set aside.

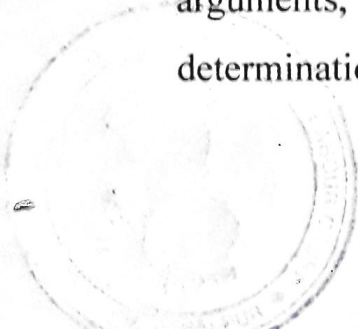
3. The Respondent Authority has defended the impugned order with a case that firstly the Act is a beneficial legislation. Interest/penalty/damage are imposed in order to save the workers from loss arising out of late deposits of employees provident fund dues. The counter further states that a notice was issued to the appellant establishment before passing the impugned order. The Appellant Establishment submitted its representation dated 30-4-2014 and 16-8-2014 which was taken on record. The Department was directed to verify the fact and objections raised by the appellant in its representations and submits its response/submissions on the



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aforesaid objections. It is further the case of the Appellant that the department filed its report/response./submissions dated 28-7-2015 made by the Enforcement Officer of the Department reporting that the appellant has not made any case for reducing the rate of penalty/interest. The report further suggests that the amount assessed in the notice did not warrant any interference. Then the Respondent Authority exercised its powers under Section 14-B of the Act after verifying the records submitted by the appellant after due appreciation of representation dated 30-4-2014 and 16-8-2014 submitted by the appellant establishment effectively verifying the proposed statement of damages viz a viz the date of remittance made by the appellant and submissions dated 28-7-2015 made by the Enforcement Officer, the impugned amount was assessed towards damages and interest which requires no interference by this Tribunal.

4. The Appellant has filed rejoinder wherein it has mainly reiterated its case as stated above.
5. I have heard arguments of Shri Uttam Maheshwari, learned counsel for the Appellant Establishment and learned Counsel Shri J.K.Pillai, for the Respondent Authority. I have gone through the record as well. On perusal of the record in the light of rival arguments, following points come up in this appeal for determination:-





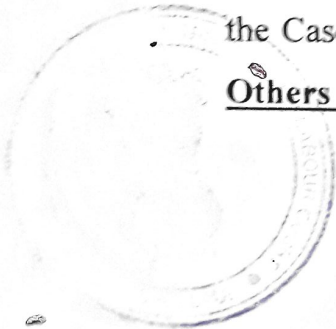
(1) Whether the finding of the Respondent Authority holding that the Appellant Establishment is liable for payment of interest and penalty for late deposits is correct in law or fact or not?

(2) Whether the finding of the Respondent Authority with respect to the assessment of interest and damages is correct in law or fact or not?"

6. POINT NO.1 FOR DETERMINATION:

According to the learned counsel for the Appellant, the finding of the Respondent Authority holding the appellant establishment liable to pay interest and penalty for late deposits is incorrect in law. Learned counsel submits that since the responsibility to pay the employees provident fund dues for the period in question was decided on 26-11-2012 by the Respondent Authority by way of holding the Appellant Establishment liable to pay employees provident fund dues of employees for the period July-2008 to July-2012, hence the due date for depositing should be counted from this date only. It has been further submitted that the default means failure in performance to submit the contribution as required by law. Learned counsel has relied to decision of Hon'ble the Apex Court in the Case of M/S Hindustan Times Limited vs Union Of India & Others (1998) 2 SCC 242. Learned Counsel for Respondent has

  
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opposed this submission with an argument that firstly the Act applies Suijuris . He has referred to Section 1(3) of the Act, which is being reproduced as follows:-

**1[(3) Subject to the provisions contained in section 16, it applies-**

**(a) To every establishment which is a factory engaged in any industry specified in Schedule I and in which 6 [Twenty] or more persons are employed, and**

**(b) To any other establishment employing 1[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:**

7. On this basis, learned counsel further submits that the Appellant automatically came into the purview of the Act when it had employed more than 20 persons in its establishment. Learned counsel for Respondent has further referred to Rule 30 of the Employees Provident Fund Scheme, 1952 which is as follows:-

**30. Payment of contributions**

**(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).**

**(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an**

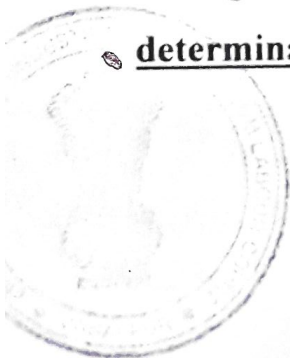


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equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges. [www.epfindia.gov.in](http://www.epfindia.gov.in) 43

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

8. As Rule 30 provides that the employees provident fund dues of the employees should be deposited within 15 days of the next month when his wages become due. Since the wages of the employees of the appellant establishment became due in the respective month within the period in question, they were to be deposited within 15 days of the next month. Hence the argument of learned counsel for the appellant that due date for purposes of Rule 30 of the Employees Provident Fund Scheme, 1952 should be taken the date of order of assessment under Section 7A of the Act cannot be accepted and the due date is 15<sup>th</sup> day of next month when the wages of the employees of Appellant Establishment become due. On the basis of this fact, the finding of the Respondent Authority that there was a delay by the appellant in depositing the employees provident fund dues cannot be held unjustified in law or fact. Accordingly the impugned finding is held justified in law and fact and is affirmed. Point for determination NO.1 is decided accordingly.



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**9. POINT FOR DETERMIANTION NO.2:-**

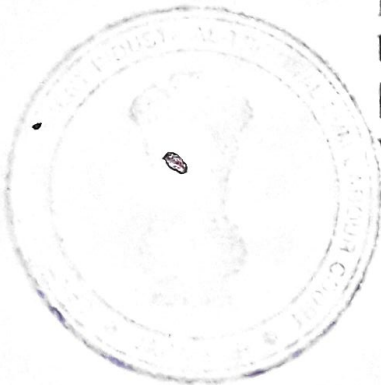
Before entering into any discussion Section 7Q and 14-B of the Act requires to be mentioned here, which are being reproduced as follows:-

**Section 7(Q)-**

The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

**Section 14(B)-**

Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund the 2 [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 3 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 4 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 5 [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover 6 [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.] 7 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.] 8 [Provided further that the Central Board may reduce or waive the damages levied under this section in relation to



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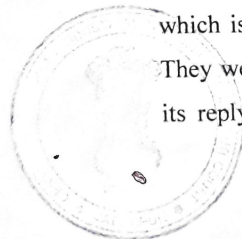


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an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

10. Hence this preposition of law is settled that in case of default in payment of employees provident fund dues, the employer shall be liable to pay the interest and may also be liable to pay the damages as penalty. Now coming to the point of computation of damages and interest.

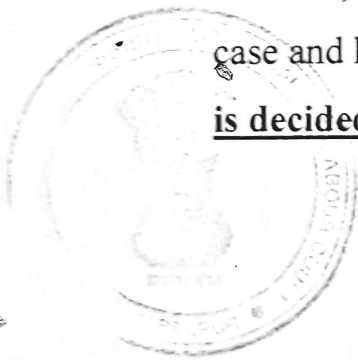
11. Perusal of the impugned order shows that it has been passed by the Respondent Authority after having gone through the circumstances of the case and taking into consideration the defaults committed by the employer and the length of the default and frequency, loss of interest suffered by the employees, increased cost of damages as the fourth para the impugned order discloses. In the second para of the impugned order the Respondent Authority has made a mention of representation of Department dated 28-7-2017 and has relied on this report. It is a specific case of the appellant that copy of this report of Enforcement Officer dated 28-7-2015 which is basis of the impugned order was never supplied to them. They were not given any opportunity of hearing on this report. In its reply/counter to the appeal, the Respondent Authority has not



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specifically denied this allegation and the impugned order also does not mention that before relying on this report of Enforcement Officer, the appellant establishment was given an opportunity of hearing on this report. Hence it is established that the report of the Enforcement Officer which was relied by the Respondent Authority in recording the finding regarding assessment of amount in violation of principles of natural justice because no opportunity of hearing was given to Appellant Establishment on this report. Consequently, it is thus held that the Respondent Authority committed error in law in relying on the report, in the case in hand.

12. As it has been mentioned here earlier, the impugned order states the facts and circumstances of the matter, defaults by the employer, the length of default and frequency and many other things as mentioned in para four at page no.2 of the impugned order were considered by the Respondent Authority in passing the impugned assessment but the impugned order nowhere shows that any of these points have been discussed by the Respondent Authority in the Impugned order and any finding on this points have been recorded by giving any reasons in this respect, hence the observation of the Respondent Authority in the impugned order are nothing but farcical while acting as a quasi-judicial Authority, the Respondent Authority is bound by law to record its own finding supported by cogent reasons, admissible in law and facts which he has not done in this case and has committed error in law. **Point for determination No.2 is decided accordingly.**



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13. On the basis of the above discussion, the appeal deserves to be allowed partly.

ORDER

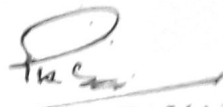
Appeal is allowed partly. The finding of the Respondent Authority that the Appellant Establishment is liable to pay interest and penalty in form of damages for late deposits in the light of Rule 30 of Employees Provident Fund Scheme 1952 is confirmed.

The finding of the Respondent Authority with respect to the computation of the amount is set aside.

The Respondent Authority is directed to decide this point afresh after giving an opportunity of hearing on the representation/submission of the Department dated 28-7-2015 by recording specific finding on the point of period of default and amount of interest as well as penalty with cogent reasons with respect to finding.

Since the matter is old the Respondent Authority will do good in disposing the matter within three months.

No order as to costs.

  
(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED, DATED AND PRONOUNCED.

  
(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:7-1-2022

