

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

**APPEAL NO. CGIT- 2/EPFA299/2017**

**M/s. Saboo Silk Emporium.**

6/7 Panchratna,

Mama Parmanand Marg,

Opera House,

Mumbai- 400 004.

- Appellant

V/s.

**1. The Regional Provident Fund Commissioner**

Bandra (Mumbai-I),

Employees Provident Fund Organization,

341, Bhavishya Nidhi Bhawan,

Bandra (East), Mumbai,

Maharashtra- 400 051.

**2. Recovery Officer,**

Bandra (Mumbai-I),

341, Bhavishya Nidhi Bhawan,

Bandra (East), Mumbai,

Maharashtra- 400 051.

- Respondents

**ORDER**

(Delivered on 25-02-2025)

M/s. Saboo Silk Emporium has challenged the legality and propriety of order dated 12.09.2017, passed u/s. 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short, "the EPF Act"), in the present appeal u/s. 7-I of the EPF Act.

2. The appellant engaged in the business of trading in clothes and sarees. By CODE DRAFT LETTER dated 10.06.2014 code number was allotted to their establishment, accordingly contribution

was paid. He was served with the notice dated 23.06.2016 for the period from March 2006 to March 2013 for Damages of Rs.9,03,268/- and another notice dated 11.04.2017 for the period April 1997 to December 2016 for Interest and Damages for Rs. 50,38,602/-. Those notices were replied and thereby pointed out that, payment of contribution was made in different AICS of Rs.3,68,222/- for the period April 2006 to November 2017 on 22.09.2014 and also made payment of Rs.11,31,454/- on 03 March 2016 as per order dated 17.05.2016 for the period from April 1997 to March 2006. Similarly minimum Ad-hoc charges as prescribed under the period from December 2012 to March 2017 was paid, due to financial conditions the company was closed during August 2013 to December 2016. It reveals that on the show cause notices dated 23.06.2016 and 11.04.2017, the respondent passed an orders on 12.09.2017. Those orders are the subject matter of present appeal.

The appellant contended that, CODE DRAFT LETTER is allotted in the year 2014 as such damages cannot be demanded from 1997. In fact, in the meeting held on 03.12.2003, CBT issued internal circular dated 04/05 May 2004, in which it has been made clear that, for pre-discovery period, no damages shall be levied, still without giving personal hearing regarding coverage of establishment from April 2006, the coverage was pre-poned from April 1997 as such the period from April 1997 is pre-discovery period. The appellant further contended that, both the notices were replied by common reply and it was pointed out that, delay in remitting amount was not intentional nor deliberate. There was no malice on their part. Still while passing the orders, the Authority

failed to consider the reply and the orders have been passed in mechanical manner. Those are contrary to law, perverse and also passed in grave disregard to the prevailing law enunciated by Supreme Court. Those are inconsistent with the provisions of the EPF Act, thus the appellant prays for setting aside the orders under appeal alongwith direction to refund of amount of Rs.2,41,278/- or adjust the same.

**3.** The respondent resisted the appeal by counter reply and thereby denied all the contentions of the appellant in totality. The respondent submitted that, the establishment of the appellant was covered w.e.f. 01.04.2006 vide CODE DRAFT LETTER dated 10.06.2014, however after search of record it reveals that, the establishment of the appellant attracts the provisions of the EPF Act w.e.f. from 01.04.1997 therefore the appellant was directed to pay the dues from 01.04.1997 amounting to Rs.18,43,600/-. The respondent further submitted that, the appellant deposited the entire contribution for the period from 01.04.2014 to 30.09.2014 and 01.04.2016 to 31.03.2017 belatedly, therefore enquiries were initiated against the appellant and an amount of damages and interest were assessed that too after giving reasonable opportunities to the appellant in both the enquiries and the orders came to be passed on 12.09.2017.

The respondent also submitted that, the alleged circular dated 15.04.2004 issued in respect of pre-discovery period was withdrawn by another circular dated 13.02.2009. The appellant itself agreed the coverage of the establishment w.e.f. 01.04.1997 accordingly remitted the amount/dues as per the order u/s. 7-A of the EPF Act in April 2016 therefore the damages and interest are

levied. The appellant deposited some amount towards damages and interest, therefore claim is restricted to the amount of Rs.2,82,022/- towards damages and Rs.1591/- towards interest. Lastly the respondent urged that, the orders under appeal have been passed after providing sufficient opportunity to the appellant. The appellant is habitual and during enquiry the representative of the appellant agreed to remit dues. There is no illegality in the order under appeal and ultimately requested for rejection of appeal.

4. I have heard Mr. Manoj Gujar Advocate for the appellant & 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. If yes, whether the appellant is entitled for relief as prayed?

Yes, partly.

#### **REASONS**

5. **Point No.1-** The Learned counsel appearing on behalf of 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 thereby covering the establishment under EPF Act w.e.f. 01.04.2006 and subsequently the establishment of the appellant was covered under EPF w.e.f. 01.04.1997, accordingly the respondent initiated the proceeding u/s. 7-A of the EPF Act and the amount assessed therein was also remitted by the appellant, still the respondent has claimed the damages for in between period.

He further submitted that, Central Board Trust 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 April 1997 is pre-discovery period, therefore the respondent cannot claim any damages for the pre-discovery period. Similarly due to loses and financial condition, the establishment was closed during December 2012 to March 2017 therefore, there was delay in remitting the contribution. There is no mens-rea nor delay in remittance of amount is intentional. He put his reliance on 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. As against this, the counsel appearing for the respondent submitted that, the appellant remitted the amount of contribution from 1997 to April 2006 belatedly, therefore the damages and interest have been claimed from the appellant. She further pointed out that, the circular issued in respect of pre-discovery period was withdrawn by the EPFO vide circular dated 13.02.2009, therefore the appellant cannot get the benefit of circular of 2004 in respect of late remittance of P.F. contribution alleging pre-discovery period. Financial difficulty and mens-rea is not

relevant for belated remittance of Provident Fund Contribution. The reliance has been placed on the decisions in **M/s. K. Streetlite Electric Corporation v/s. RPFC Haryana AIR 2001 (SC) 1818, M/s. Sumedha Vehicles Pvt. Ltd. v/s. CGIT MP HC, M/s. Mynah Designs v/s. APFC/RPFC Delhi (South) CGIT-I Delhi, WP No. 28789/2019 M/s. Sumedha Vehicles Pvt. Ltd. v/s. Central Government I.T. & Ors. and M/s. Shapoorji Nusserwanji & Co. v/s. Chairman CBT of EPF Scheme 1968 SCC Online Bom. 95.**

7. I have given anxious consideration to the oral submissions advanced on behalf of the parties, in the light of various copies of documents available on record. Initially by CODE DRAFT LETTER dated 10.06.2014, code number was allotted to the appellant and thereby covered the establishment of the appellant under EPF w.e.f. 01.04.2006 and thereafter the establishment of the appellant came to be covered under EPF w.e.f. 01.04.1997. It has come on record and not much disputed that, in the proceeding initiated u/s. 7-A of the EPF Act, the appellant deposited the contribution of P.F. assessed in the order for the period from 01.04.1997 to December 2016 and for that belated payment of P.F. contribution, the amount of damages and interest has been levied against the appellant.

8. On perusal of the CODE DRAFT LETTER issued by the respondent, it seems that, there is no mention 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 the EPF Act w.e.f. 01.04.2006 on the basis of inspection or visit made by enforcement officer. There is absolutely nothing on record to show that, as the appellant refused to produce entire record and

in subsequent inspection done by Enforcement Officer, record was produced by the appellant and on that basis the coverage of establishment was preponed from 01.04.2006 to 01.04.1997.

9. It has come on record that, the contribution assessed by the respondent since 01.04.1997 in the proceeding u/s. 7-A of the EPF Act was deposited by the appellant. It is the case of the respondent that, there is delay in remitting the amount of contribution assessed in the order passed u/s. 7-A of the EPF Act, therefore the respondent is claiming the damages and interest on belated remittance of contribution from the date of coverage from April 1997 to till issuance of CODE DRAFT LETTER dated 10.06.2014 is pre-discovery period.

10. There appears no dispute that, on the basis of the meeting of Central Board Trust (CBT) held on 03.12.2003, EPFO issued circular in 2004 and as per that circular, "No damages shall be levied for pre-discovery period. However the counsel for the respondent submitted that 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."

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 benefit of circular issued in 2004 till the withdrawal of that circular in 2009 prospectively i.e., from 01.04.1997 to 13.02.2009.

**12.** Though it is contended on behalf of the appellant that, the circular was issued as per the Direction of Central Board Trust, however the same was not withdrawn by the Central Board Trust and the officer of EPFO has no right to withdraw the said circular, however in view of the observation of the Calcutta High Court relied by the appellant and also discuss earlier, I do not think it is necessary to go into the rights of EPFO in respect of withdrawal of circular.

Admittedly, the respondent has claimed the damages from April 1997, however CODE DRAFT LETTER dated 10.06.2014, the establishment of the appellant was covered from 01.04.2006 and subsequently from 01.04.1997, therefore this period is pre-discovery period and as per the circular of 2004 issued by the EPFO and subsequently withdrawn by another circular dated 13.02.2009, as such the period from 01.04.1997 is pre-discovery period and as per circular issued based on the direction of CBT, the respondent cannot claim damages for the pre-discovery period till 13.02.2009. In short, the damages cannot be claimed from 01.04.1997 to 13.02.2009.

It is contended on behalf of the appellant that, there was no intentional delay in remitting the contribution of Provident Fund. Due

to financial crisis, no manufacturing activities were carried out, no employees were employed, no wages were paid during August 2013 to 31<sup>st</sup> December 2016, however the counsel for the respondent rightly pointed out that, there is no closure notice to that effect. Moreover it seems that administrative charges were paid by the appellant to that effect during the said period.

**13.** 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.

**14.** I have also gone through the various decisions relied on behalf of the respondent. The decision of Supreme Court in **M/s. K. Streetlite Electric Corporation v/s. RPFC** is in respect of delay in initiating enquiry in respect of damages. The decision of **M.P. High Court M/s. Sumedha Vehicles Pvt. Ltd.** is in respect interest u/s. 7-Q of EPF Act and the decision of **Bombay High Court in M/s. Shapoorji Nusserwanji** after proper enquiry the employer to make back payment he is not applying the act and the scheme retrospectively, but is only enforcing it from the date it should have been implemented by the employer. There cannot be any quarrel about the relation laid down in these matters, however I do not think that these decisions are anyway helpful in the present matter.

**15.** It is clear from the show cause notice dated 11.04.2017, the respondent has claimed the damages from 01.04.1997 and in the order under appeal the authority assessed the same amount of Rs. 02,82,022/- towards damages, however I have observed that, the appellant is not entitled for damages for the pre-discovery period more particularly from 01.04.1997 to 13.02.2009, therefore the order under appeal suffers from illegality, hence I answer this point in the affirmative.

**16. Point No. 2-** It appears that, the respondent has claimed the damages from 01.04.1997 to April 2016 and I have observed earlier that, the appellant is not liable to pay damages for pre-discovery period based on circular of the respondent till withdrawal of circular from 13.02.2009, and thereafter also as the establishment was

closed during August 2013 to December 2016, the appellant is liable to pay the 50% amount as assessed in the order, thus the appellant is entitled for relief partly as prayed, hence I answer this point accordingly.

In the result, the appeal is partly allowed. The appellant is directed to pay the 50% of amount towards damages assessed in the order under appeal within a period of eight weeks from the date of order, if not paid earlier and excess amount if any paid by the appellant be adjusted in the payment. Parties to bear their own cost.

Sd/-

Date: 25-02-2025

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