

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-2/12/2020

M/s ASF Insignia

Appellant

VS.

RPFC, Gurgaon

Respondent

ORDER DATED :-16/03/2023

Present:- Ms. Neetu Mishra, Ld. Counsel for the Appellant.
Shri Chakardhar Panda, Ld. Counsel for the Respondent.

This appeal challenges the orders dated 04.10.2019 passed by the APFC Gurgaon imposing 6,59,033/- and 3,38,263/- as damage and interest respectively under section 14B and 7Q of the EPF and MP Act, against the Appellant Establishment for delay in remittance of the PF dues and of its employees for the period 10.2009 to 09/2017.

Notice being served the Respondent appeared through its counsel and filed written reply. The Appellant filed rejoinder thereto. Both parties advanced arguments in detail in support of their respective stand taken in this appeal.

The stand of the Appellant is that, it is a covered establishment engaged in construction business and for execution of the work many sub contractors are engaged. The EPFO had allotted the code no. to the establishment for compliance of statutory deposits in respect of its employees. In the year 2017, the EPFO launched a campaign for voluntary enrolment of the employees by the establishment if escaped

to enroll earlier. The scheme had offered certain exemptions and benefits to the employer making the declaration and voluntary enrolment. Among the other benefits, there was provision under the scheme that for voluntary enrolment and the declaration, the establishment shall deposit the employer share only and the employee share, if not deducted earlier, shall stand waived. It was also provided that the deposit after the declaration, shall be made with simple interest at the rate of 12 per cent per annum. But the damage shall be payable at the rate of Rs.1 per annum. It was further stipulated in the scheme that the benefits would be available if the establishment shall make the remittance within 15 days from the date of declaration. The Appellant establishment submitted application and made the declaration taking the advantage of the scheme announced by the EPFO which is known as EEC 2017. This was so made by the Appellant as it noticed that some employees of the sub contractors have not been enrolled. Thus, on 29.06.2017 the Appellant made the declaration of voluntary enrolment of 116 employees indicating their names fathers' name date of birth and date of eligibility for membership etc. The said declaration was received by the EPFO, on 30th June 2017. Though the Appellant was eager and willing to make the deposit within 15 days from the date of declaration could not do so as the portal of the EPFO was not functional. Soon after the portal became functional the Appellant establishment made the deposit through ECR. While the matter stood thus, on 19.02.2018 the APFC served a notice on the claimant calling to so cause as to why damage and interest shall not be levied for the delay in remittance of the PF dues for the period 10/2009 to 09/2017. The Appellant establishment appeared and filed a written reply to the notice stating therein that the delay in remittance was not intentional but for the technical glitch in the portal. It was also pointed out that the dues were to be deposited on or before 15.07.2017 but the same were deposited few days thereafter, that is on 24.07.2017. But the EPFO after having received the PF contribution under the Employee Enrolment campaign 2017, in respect of 116 employees, had illegally and against its own policy initiated the enquiry and levied the damage and interest on the

Appellant illegality. The mitigating circumstances pointed out during the enquiry was not considered by the commissioner who also failed to give any finding on the mensrea of the establishment behind the delay. Hence, the order passed by the commissioner is illegal and liable to be set aside.

The Respondent in his written reply has fully supported the impugned order. It has been stated that sufficient opportunity was given to the Appellant for production of records during the enquiry. On 21.06.2018, one Manish Tanwar appeared on behalf of the establishment and submitted a letter stating that the establishment has enrolled 116 members during the EEC 2017 and also stated that the delay in compliance was not deliberate. But the details of the employee enrolled nor the details of the payment made were provided. After giving opportunity to produce the bank statement and declaration to validate the dates, the commissioner concluded the enquiry and passed the impugned orders. The Id. Counsel for the Respondent further submitted that the establishment could not produce the copies of the challans showing remittance though may be after 15 days. The Respondent has further stated that the establishment had tried to mislead the Tribunal by saying that the portal was mal-functioning leading to delay in remittance. With this the Respondent has pleaded that the establishment is not entitled to the benefits of the EEC 2017. The other stand of the Respondent is that the commissioner has passed two separate orders Under Section 14 B and 7Q of the Act. That being the position the orders are not composite and the appeal challenging the order passed under section 7Q is not maintainable.

During course of argument the Appellant mainly raised two questions i.e. no finding has been rendered on the mensrea behind the delayed remittance and the levy of the damage has been made ignoring the facts that the establishment is entitled to the benefits declared under the EEC scheme.

Counsel for the Respondent on the contrary vehemently challenged both the stand taken by the Appellant and argued that for the recent pronouncements by the Hon'ble Supreme Court in the case of **Horticulture Experiment Station, Gonikoppal, Coorg Vs. the RPFC (Civil Appeal No. 2136 of 2012 ordered dated 23.02.2023)** mensrea is no more the required condition for levy of damage as has been done in this case. He also argued that Horticulture experiment referred supra being the latest judgment of the Hon'ble Supreme Court, shall be followed.

The argument advanced by the counsel for both the parties has made it necessary to examine if the Appellant is entitled to the benefits declared under the EEC 2017. The EEC 2017 was launched with a view to provide opportunity to the employers to voluntarily come forward and declare details of all such employees who were entitled for PF membership between 01.04.2009 to 31.12.2016, but could not be enrolled for any reason. The campaign aims to extend the PF benefits to the employees who have been deprived of the same. The said scheme declares certain incentives available to the employer. Under the said scheme the employer is liable to deposit the employer share of the contribution only, and the employee share if not deducted earlier, shall stand waived. Similarly, the employer is liable to pay simple interest at the rate of 12 per cent per annum and damage at the rate of Rs. 1 per annum. Clause 10 and 12 of the scheme provides that damage at the rate of Rs. 1 per annum are to be remitted up from while remitting contribution and interest. Clause 11 provides that if the employer would fail to make the remittance within 15 days of the declaration, the dues, interest and damage payable by him in respect of the declaration made under this campaign shall be deemed to have not been made under the campaign.

Thus, the spirit of the campaign was clear to the extent that the incentives can be availed by the employer, if the remittance is made within 15 days from the date of declaration of the employees under the scheme. In this case the declaration, as admitted by both the parties was made on 30.06.2017 and the documents to that effect was

submitted to the RPFC by the appellant, containing the list of 116. The same has been filed along with the memo of this appeal. It is the stand of the Appellant that the remittance, as per the scheme should have been made within 15 days from 30.06.2017 which falls due on 15.07.2017. The Appellant also stated that the establishment though tried to make the remittance along with the interest and damage, could not do so as the portal of EPFO was not working on 15.07.2017. As soon as the portal became functional the deposit was made on 24.07.2017. This delay in remittance was not deliberate and duly accepted by the EPFO. But surprisingly the EPFO, though received the remittance initiated the enquiry under section 14B and 7Q which is illegal. The Ld. Counsel for the Appellant also argued that this fact was pleaded before the commissioner to establish the bona fides behind the delayed remittance. But the commissioner without considering the same and without giving proper opportunity assessed the non speaking impugned order.

The Ld. Counsel for the Respondent counter argued that the impugned order clearly shows how the matter suffered adjournment for the plea of the establishment to produce documents relating to the declaration and the details of the bank statement showing deposit and to validate the date of payment. But the establishment did not produce the details and as such the enquiry was concluded and impugned order was passed.

The Appellant has not filed any document to show that the details of the 116 members declared on 30.06.2017 was produced before the APFC during the enquiry. No document, as seen from the impugned order, was also produced before the commissioner to convince him that remittance was made on 24.07.2017 instead of 15.07.2017. There is also no evidence to believe that the portal of EPFO was not functioning between 15.07.2017 to 23.07.2017. The Appellant along with the memo of appeal has filed the copies of the challans stating that deposit of the dues through ECR in respect of the employees declared availing the benefit of the scheme were made. The Ld. Counsel for the Respondent raised dispute to the said challans

and ECR on the ground that those ECRs are not relatable to the employees declared during the campaign. The admitted fact is that the establishment had declared the names of 116 employees for voluntary enrolment during the campaign. The challans filed by the Appellant are of the date 17.07.2017 for different wage months ranging from April 2011 to December 2016. None of these challans and the ECRs are in respect of the 116 employees declared during the campaign. These challans and ECRs may be for the other employees of the establishment who are already members of EPF. Thus the argument advanced by the Appellant that for availing the scheme the establishment is not entitled to be saddled with damage in a higher rate than declared under the scheme sounds not convincing as the Appellant had failed to establish that the challans were deposited in respect of the declared employees within 15 days of the deceleration. The Appellant has also failed to justify the stand that the portal was not working between 15.07.2017 to 23.07.2017 as a result of which the remittance was made on 24.07.2017.

Admittedly, there are two separate orders passed u/s 14 B and 7Q of the EPF and MP Act. The Appellant has described the same as composite orders. Plain reading of the provision of law u/s 7 I of the Act shows that the order passed u/s 7 Q calculating the interest payable is not appealable, to the Tribunal. The position of law in this regard was discussed by the Honb'le Supreme Court in the case of **Arcot Textiles Miles Ltd. Vs. RPFC and Ors. (2013) SCC I B** and it was held that order passed u/s 7Q, if a composite order being passed u/s 7A is amenable to appeal. It was further held that in any composite order a facet of which is appealable, the other part would be appealable too. If any independent order is however passed, no appeal would be maintainable in respect of the interest compound calculated under section 7Q of the Act. In this case since two separate orders have been passed by the commissioner under section 14B and 7Q, the same are not treated to be composite orders. The appeal challenging the order passed u/s 7Q is held not maintainable. Hence ordered.

Order

The appeal in respect of the order passed u/s 14B of the EPF and MP Act is held devoid of merit and dismissed. The order passed u/s 7Q of the Act being not maintainable, no order is passed in respect of the same.

Presiding Officer