

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-2/26/2019

M/s. Sanya Hospitality Pvt. Ltd.

Appellant

VS.

APFC, Gurgaon

Respondent

ORDER DATED :-05/01/2023

Present:- Shri Kapil Hansh & Sh. Puneet Saini, Ld. Counsels for the Appellant.
Shri S. C Gupta, Ld. Counsel for the Respondent.

This appeal challenges the order dated 17/10/2014 passed by the APFC Gurgaon u/s 14B of the EPF and MP Act assessing damage of Rs. 1,93,687/- payable by the appellant establishment for delay in remittance of the PF contribution of its employees for the month of October 2019.

Facts leading to the appeal in short is that the appellant is a company incorporated under the Companies Act 1956 and engaged in the Hotel Industry managing 5star Hotel. The establishment was covered under the EPF and MP Act since, the year 2009 and being allotted a code No. was diligently making payment and deposit of the PF dues of its employees. For the month of October 2009 the establishment made deposit of the PF contribution which included both employer and employee share and administrative charges amounting to Rs. 1,82,579/- in the State Bank of India vide challan dated 14/11/2009 alongwith the demand draft No. 280038 dated 13/11/2009 issued by its banker i.e Oriental Bank of Commerce. Two years after the said deposit made within the stipulated time a notice was served on the establishment on 18.06.2012 by the respondent No.1 i.e. EPFO alleging non deposit of the contribution for the month of October 2009. In response to the notice the establishment gave reply alongwith the copy of the challan dated 14/11/2009 duly submitted in the State Bank of India indicating that the amount has been deposited within the stipulated time. The said reply was not acknowledged by the EPFO. The establishment than at his own level made inquiry and wrote a letter on 28/06/2012 to the State Bank of India to know the status of the challan and the demand draft deposited towards contribution for the month of October 2009. The State Bank of India though received the correspondence

did not reply. On further query the officials of the State Bank of India confirmed orally that the challan and the demand draft deposited for the period October 2009 by the establishment has been lost and not traceable. The appellant went a step forward and ascertained from its bank i.e Oriental Bank of Commerce that the relevant demand draft has not been encashed by the EPFO. Thus the appellant re-deposited the PF amount for the month of October 2009 in the year 2012. Soon thereafter the EPFO issued a summon dated 10/01/2014 proposing an inquiry u/s 14B for imposition of damage on account of the delay in remittance. The establishment appeared and participated in the inquiry and duly submitted that there is absolutely no delay in remittance for the month of October 2009 and the delay occurred is not attributable to the appellant. The delay has occurred on account of the lapses on the part of the State Bank of India and EPFO Authorities. There being no mensrea behind the delay on the part of the appellant no damage should be imposed. But the commissioner did not consider the mitigating circumstances pointed out by the appellant supported by the documents, but proceeded to pass the order mechanically imposing damage of Rs. 1,93,687/-. Before the appeal period is over the respondent No.1 also recovered the said amount from the account of the appellant without serving any notice u/s 8F of the Act. Being aggrieved the present appeal has been filed.

Notice of the appeal being served the respondent No.1 EPFO filed written reply refuting the stand taken by the appellant. Besides pleading the legislative intention behind the enactment u/s 14B it has been pleaded that the inquiry was rightly proposed for delayed in remittance and several opportunities were granted to the establishment to explain the circumstances behind the delay. Accordingly the inquiry suffered delay and adjournment. Though during the inquiry the appellant establishment took a stand that the delay in deposit is attributable to State Bank of India who failed to credit the demand draft amount in the account of EPFO, the same was found not satisfactory and the appellant establishment was asked to obtain a certificate of no objection to the said submission from State Bank of India and to make State Bank of India a party to the case. But the appellant could not produce the no objection certificate and the delay in remittance which was a matter of record could not be satisfactorily explained by the appellant establishment. Hence, the commissioner has rightly and justifiably passed the order.

During course of argument the Ld. Counsel for the appellant pointed out to the copy of the challan with receipt seal of the bank dated 14/11/2009 filed as annexure C and pointed out that the establishment with all bonafides had made deposit of the employer share and employee share for the month of October 2009 on 14/11/2009 i.e within 15 days of the succeeding month. The challan mentions the code No. of the establishment and the name of the drawee bank and the demand draft No. Annexure C bears the seal of State

Bank of India M R Gurgaon acknowledging receipt of the same on 14th November 2009. On behalf of the appellant the notice dated 18.06.2012 issued by the EPFO alleging non remittance for the month of October 2009 has been filed. Annexure E is the reply given by the appellant to the EPFO in response to the demand notice and as seen from the seal dated 28th June 2012 affixed on the same the EPFO had received the said reply. The appellant has also filed the other representation given to the State Bank of India on 27/06/2012 received by the later on 28/06/2012 seeking a clarification as to what happened to the draft No. 280038 payable by Oriental Bank of Commerce to the EPFO. The Ld. Counsel for the appellant on the basis of these documents argued that the State Bank of India to cover up its own fault never gave any written reply though the appellant was orally informed that the draft has been lost. The fact was cross checked from Oriental Bank of commerce and it was found out that the draft amount has not been encashed. Thus, the Ld. Counsel for the appellant while relying on the judgment of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and the case of **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017LLR 337** strenuously argued that imposition of damage under the provisions of 14B of the EPF and MP act requires existence of mensrea as a pre condition. Unless the said aspect is established by the EPFO for each and every delay in remittance damage is not leviable. He also pointed out that the commissioner a quasi judicial authority is required to give a finding on the mensrea behind the delay and duty bound to assign reason as to why damage at the highest rate shall be imposed on the establishment. But this is a typical case where the respondent without assigning any reason and in a whimsical manner imposed the penalty at the maximum percentage.

The LD. Counsel for the respondent counter argued that during the inquiry the submission made by the appellant was duly considered and it was asked to bring a no objection certificate from State Bank of India. Since the appellant failed to produce the same the commissioner did not consider the plea taken and observed that the delay attracts penal damage.

Be it stated that the commissioner of the EPFO holding the inquiry u/s 14B discharges a quasi judicial function and under the statute he is authorized to summon witnesses and documents if required for the inquiry. In this case from the documents filed by the appellant establishment it is found that sufficient documentary evidence were placed before the commissioner to show that the contribution for the month of October 2009 was remitted in time through challan alongwith a demand draft in the State Bank of India. When those documents were available to the commissioner, it is not understood why the commissioner did not choose to call the bank to justify or deny the stand of the appellant. Instead of doing so it is surprising to note that the commissioner

instructed the appellant to obtain a no objection certificate from the Bank and even advised the establishment to add State Bank of India as a party to the inquiry ignoring the fact that the inquiry was initiated at the behest of the EPFO and it was open to the EPFO to add State Bank of India as a party.

From the documentary evidence filed by the appellant it is evidently clear that the establishment had deposited the contribution for the month of October 2009 in time and for the negligence of State Bank of India the draft and challan were lost and the establishment was compelled to redeposit the amount beyond the prescribed permissible period. Thus, there was no intentional delay or mensrea behind the said delay. This mitigating circumstance was ignored by the commissioner during the inquiry and while passing the order which makes the order illegal and liable to be set aside. Hence, Ordered.

ORDER

The appeal be and the same is allowed on contest. The impugned order passed u/s 14B of the Act is hereby setaside. The amount recovered from the account of the appellant pursuant to the said order shall be refunded to the appellant within one month from the date of this order without interest failing which the amount shall carry interest @ 6% per annum from the date of recovery and till the payment is made. Consign the record as per Rule.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 22(16)2015

M/s. Lakhani Rubber Work
Through Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Faridabad
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05.01.2023

List the matter again on 14.02.2023 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 221(16)2016

M/s. Vande Matram High School Appellant
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 05.01.2023

The Ld. Counsel for the Appellant filed the written notes of arguments after supplying a copy to the Ld. Counsel for the Respondent. List the matter on 20.02.2023 for final arguments. .

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 243(16)2017

M/s. Apra Auto (India) Pvt. Ltd.
Through Sh. Raj Fogat, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Gurgaon
Through Sh. Satpal Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05.01.2023

List the matter again on 14.02.2023 for final arguments. Let the LCR be filed on the next date of hearing with proper pagination and firmly tagged.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/03/2021

M/s. Precision Metal Components
Through Sh. S.K Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-Gurugram
Through Sh. S.N. Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05.01.2023

Arguments heard in part. List the matter on 19.01.2023 for
continuation of the arguments.

(Presiding Officer)