

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, NEW DELHI**

Appeal no. 1094(4)2015

M/s. Ambar Prakashan Vs. APFC/RPFC, Delhi North.

Counsels:

For Appellant:- Sh. M.K. Dwivedi, Id. counsel.

For Respondent:- Sh.B.B. Pradhan, Id. counsel & Sh. Lalit Kumar A/R.

Order Dated:-29.09.2025

ORAL

1. The appellant has preferred the present appeal assailing the order dated 03.07.2015 passed by the Assistant P.F. Commissioner, Gurugram West **under section 14 B & Section 7 Q of the EPF & MP Act (herein after referred as 'the Act')** whereby, the appellant establishment is asked to deposit the damages u/s 14B of 'the Act' to the tune of Rs. 58,393/-for belated payments made by the appellant establishment for the period 04/2007 to 03/2014. Further, the appellant establishment is also directed to deposit the interest on belated payments under section 7Q of 'the Act' for the same period to the tune of Rs.31,782/-.

2. Appellant has assailed the order on several grounds inter-alia that the respondent has passed the impugned orders without application of mind as in a previous enquiry conducted u/s 14B of the Act, the period was taken from 03/2000 to 08/2008 and order was passed which has already been challenged by the appellant through appeal no. 306(4)2013. It is the contention of the appellant that again the respondent has issued the notice dated 16.07.2014 in which he has taken the period from 04/2007 to 03/2014 taking a period already covered in the previous enquiry. Relying upon the judgment passed by **Delhi High Court in Roma Henny Security Services pvt. ltd. Vs. CBT, EPFO, 2013[1]-29 LJ**, appellant's counsel has submitted that by the said notice, interest has been levied twice upto the period 25.09.2008 and the interest amounting to Rs. 4,645/- is liable to be dropped.

Appellant has further taken the ground that the damages must be linked to the intention of the employer as here in this case the PF contribution was deposited prior to issue of the notice and the appellant had no mens rea or actus reus.

3. It is also stated on behalf of the appellant that the Id. respondent initiated the proceedings after seven years and the delay is on the part of the Id. respondent in conducting the quasi-judicial enquiry which is in total violation of the respondent's own circular issued on **28.11.1990** and the order dated 24.06.2025 passed by this tribunal in the matter of **M/s. Pine Tree Hospitality Vs. APFC/RPFC, Gurugram West, D-2/20/2024**. The Id. Counsel for the appellant also submitted that 30% of the assessed amount stands deposited with the respondent department.

4. Per contra, the counsel for the respondent has rebutted the argument submitting his written reply followed by wherein it is stated that the Act is a social welfare legislation under which the employer is duty bound to make the PF contribution on time and in case of any delay, the employer is liable to pay damages. The appellant has delayed in depositing PF dues for several months ranging from 06 days to 395 days. It is also stated on behalf of the respondent that the appellant was issued a **demand notice dated 16.07.2014** enclosing a month wise and account wise statement of belated remittances of PF contributions affixing a date of hearing before the Id. respondent on 24.07.2014, but no one appeared on behalf of the establishment on the said date. The appellant choose to remain absent on the subsequent date also and therefore, again a notice dated 07.01.2015 was served upon the appellant to join the enquiry on 10.01.2015. However, appellant did not appear on the said date and filed one written representation dated 27.01.2015 which was considered by the Id. respondent while passing the impugned order.

5. Id. Counsel for the respondent further submitted that there is no limitation set out in 'the Act' for taking the inquiry period. The

circular dated 28.11.1990 is an internal matter and cannot bypass the law. Appellant herein has failed to present any mitigating factors before the assessing authority and all the oral & written contention of the establishment are considered by the competent authority while passing the orders on merits of the case. The respondent has relied upon several judgments passed by Hon'ble Supreme Court as well as other High Courts in the matter of **ORGANO CHEMICALS INDUSTRIES & ANOTHER VS UOI (55 FJR 283)**, **The Chairman SEBI Vs. Shriram Mutual Fund & Anr**, passed in C.A Nos 9523-9524/ 2003, dated May 23, 2006, **RPFC Vs. SHIBU METAL WORKS, 1964-65 (27) FJR 491**, **STATE Vs. GIRDHARI LAL BAJAJ, 1962 II LJ46 (Bom. DB)**, **SEBI Vs. Cabot International Capital Corporation, (2005) 123 Comp. Cases 841(Bom)**.

6. Ld. counsel for the respondent reiterated that the impugned order is passed as per provision of the Act after considering all the facts and submission of the parties hence, it is a speaking order and therefore, prayed to dismiss the appeal.

7. I have heard the arguments and perused the record. Before parting any opinion on the issue, it is necessary to reproduce the section 14 B as well as Section 7 Q of 'the Act':-

Section 14B Power to recover Damages-Where an employer makes default in the payment of any contribution to the Fund [, the [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 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [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 7 [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] [Provided that before levying and recovering such damages, the

employer shall be given a reasonable opportunity of being heard]:

[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to 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, subject to such terms and conditions as may be specified in the Scheme.]

7 Q Interest Payable by the Employer-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 the 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.]

Rate of levy of damages is given in para 32 A of the Employees' Provident Funds Scheme, 1952 and subsequent para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995 which have empowered the CPFC or any such authorised officer to recover from the employer by way of penalty, damages at the rate given below:-

<i>S.No.</i>	<i>Period Of default</i>	<i>Rate of damages (percentage of arrears per annum)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(a)</i>	<i>Less than 2 months</i>	<i>Five</i>
<i>(b)</i>	<i>Two months and above but less than four months</i>	<i>Ten</i>
<i>(c)</i>	<i>Four months and above but less than six months</i>	<i>Fifteen</i>
<i>(d)</i>	<i>Six months and above</i>	<i>Twenty five</i>

8. Now coming to the present appeal, notice has been issued to the appellant establishment on 16.07.2014 asking to pay the damages and interest for the period from 04/2007 to 03/2014. Further, the respondent has failed to provide any reasoning that as to why department has issued the demand notice after a delay of seven years.

9. First of all, the contention of the appellant has to be dealt with respect of the fact that the authority has violated of his own circular issued on 28.11.1990. There is no quarrel that the said circular has been issued. In the said circular, it has been emphasized that all cases under section 14 B have to be finalized within a period of three years. It is further stated that the cases in which the damages are yet to be levied as on 30.06.1990, RPFC should ensure that all such cases are disposed of within a period of three years from now and in case of fresh default, damages shall be levied within the close of three financial years. Said advisory has been issued after considering of all the aspects that limitation has not been set out in 'the Act' and division bench of Hon'ble Allahabad High Court where it is held that where the damages are not levied within a reasonable time, employer is justified in presuming that he is not liable to pay any damages. Though, the matter was reversed by the division bench but held that "the Act' was silent on the question of time limit within which the damages are required to be imposed but it should be reasonably good. Therefore, the argument of the counsel of respondent that the circular is not binding and has no legal aspect is not tenable. The circular issued therein is furtherance of the power exercised by the Central Government under Section 20 of 'the Act'. Where the time limit is not set out, the department was naturally constrained to issue the circular keeping in view the fact that after several years ranging from 1 to 20 years, department had used to impose damages for late payment. The argument that issuance of circular is an internal act and cannot bypass the law is untenable because circular has been issued in furtherance of objective of social welfare legislation and has the effect of fulfilling

the dotted line which has been left by legislature while enacting the act.

10. Therefore, the notice issued for levying the damages and interest for seven years is unreasonable and is liable to be set aside for the period from **04/2007 to 06/2011**. The demand notice starting from the month of 07/2011 up to 02/2013 is found to be as per law.

11. In the light of above discussion, the appeal stands allowed partly. The appellant is directed to deposit the amount of damages levied in the demand notice starting from the wage month 07/2011 up to 02/2013 along with the interest amount of Rs.31,782/-u/s 7Q of the Act after adjusting the 30% of the assessed amount which stands already deposited with the respondent, within one month from the receipt of this order. Office is directed to send the copy of this order to both the parties. The record of this appeal is consigned to record room.

Sd/-

(Atul Kumar Garg)
Presiding Officer