

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

Appeal no. D-1/14/2025

M/s. TR Sawhney Motors Pvt. Ltd.Appellant

Through:- Sh. Prakash Kumar, Ld. Counsel for the appellant.

Vs.

APFC/RPFC, Delhi (East)Respondent

Through:- Sh. Narendra Kumar, Ld. Counsel along with Sh. Sunil Ranjan, AR for the respondent.

Order Dated:- 10.12.2025

The appellant, an establishment covered under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952** (Hereinafter referred to as 'the Act'), has assailed the orders passed under section 14-B (dated 20.12.2024) and 7-Q (dated 11.11.2024) of the Act, whereby the respondent assessed the dues to the tune of Rs. 13,92,093/- and Rs. 12,78,958/- respectively for the period from 23.05.1997 to 30.06.2024, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

Germane of this appeal is the issuance of notice by the respondent (dated 16.07.2024) asking the appellant to pay the damages and interest for a period of 23.05.1997 to 30.06.2024; however, the calculation sheet reflects that damages have been imposed only from 2004 to 2024, i.e., for a period of 20 years. The appellant has assailed the said orders on several grounds, *inter alia*, the impugned orders are bad in law, these were passed without application of judicial mind, the respondent failed to consider the principle of *mens rea*, the establishment did not receive timely payments from its customers due to which delay occurred in remittance of PF contributions, the situation was beyond the control of the appellant, the respondent failed to consider the financial difficulties of the appellant, and the financial situation of the appellant worsened when it was asked to pay the amount

assessed under section 7A of the Act. It is also submitted that the respondent had assessed the damages at the maximum limit prescribed under Para 32A of the Employees' Provident Funds Scheme, 1952.

The respondent filed a reply to appeal raising several preliminary objections, stating that the appeal under section 7Q of the Act is not maintainable; the appellant failed to make Central Board of Trustee as a necessary party; the allegations and averments made against the respondent are false, frivolous and vexatious; the Hon'ble Supreme Court of India in the case of "**Horticulture Experiment Station Gonikoppal, Coorg vs. The RPFC**", on 23.02.2022 held that financial difficulty is not a ground for reducing damages. It further stated that section 14B of the Act provides that where an employer/appellant makes default in payment of any contribution to the fund, the pension fund, the insurance fund or in the payment of any charges payable under any provisions of the Act or any scheme or insurance scheme, the authority authorized under section 14B of the Act may recover from the employer by way of penalty or any such damages, not exceeding the amount of arrears. The stand of the respondent is that the circular dated 28.11.1990, relied upon by the appellant is administrative in nature and cannot override the provisions of the Act. It lastly submitted that the appeal is liable to be dismissed.

I have heard the arguments presented by both parties and perused the records of the appeal. Before proceeding further, section 14B and 7Q of the Act are required to be reproduced herein:

14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund 3[, 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 4[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, 6[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:] 8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 9 [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.]

7Q. 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.]*

The rate of levy of damages is given in Para 32A of the Employees' Provident Funds Scheme, 1952, 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 authorized officer to recover from the employer by way of penalty, damages at the rate given below:-

32A. Recovery of damages for default in payment of any contribution:

(1) *Where an employer makes default in the payment of any contribution to the 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 of the Act or in the payment of any charges payable under any other provisions of the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below: —

S.No.	Period of Default	Rate of Damages (% per annum on arrears)
(a)	Less than two months	5%
(b)	Two months and above but less than four months	10%
(c)	Four months and above but less than six months	15%
(d)	Six months and above	25%

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

From the perusal of the aforesaid sections, it is revealed that if the appellant had committed default in payment EPF dues, it would be liable to pay damages and interest. Para 32 of the EPF scheme provides the rates of damages, which is the maximum rate at which the respondent can recover damages. The use of the word 'may' in the section 14B of the Act grants the authority concerned the discretion to act, taking into account the circumstances under which the delay has occurred in remitting the provident fund. The contention of the Ld. Counsel for the respondent that there is no discretion in reducing damages is misleading. The section itself states that if the appellant has any grievance, it may approach the CPFC, but only in certain circumstances. Once the authority has been empowered to impose damages and the rate has been prescribed under Para 32A of the Employees' Provident Funds Scheme, 1952, there is no meaning of providing the opportunity of

hearing the appellant, which already exists here in the section itself. If the plea of the respondent is that such an opportunity has been given only to give the appellant a chance to mention if any deposit has been escaped, then this should have been mentioned in the notice as well in the section itself. However, no such case exists here.

There is no quarrel that the respondent itself issued a circular on 28.11.1990. In the said circular, it has been emphasized that all cases under section 14B of the Act have to be finalised 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, department had imposed damages for late payment.

The respondent cannot take shelter of absence of a prescribed limitation in the Act when an assessment is required to be made. It is a benevolent Act which empowers the respondent to impose damages to an employer for not making compliance with the remittance of PF contributions, but it doesn't mean that the

department can wake up after a gap of 20 years, which is the present case. The respondent department issued a notice to the appellant asking it to pay damages and interest for belated remittance of PF contributions for the period from 23.05.1997 to 30.06.2024. However, the calculation sheets attached with the orders make it clear that damages have been calculated for the period from 2004 to 2024, meaning thereby that the respondent wants to levy the damages for a period of 20 years, which is in violation of its own circular dated 28.11.1990.

Therefore, the notice issued for levying the damages and interest for a period of twenty years is unreasonable and is liable to be set aside for the period from **04/2004 to 06/2021**. The demand notice starting from the month of **07/2021 up to 04/2024** is found to be as per law. So far so the plea of the financial difficulty as well as non-receipt of payment from the customer is concerned, the same has not been supported by any documentary evidence at all.

In light of the 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 of **07/2021 up to 04/2024** along with the interest amount of Rs. 12,78,958/- under section 7Q of the Act, after adjusting an amount of Rs. 5,00,000/- which stands already deposited with the Tribunal by way of FDR. The said FDR, shall be released in favour of the respondent along with the accrued interest. The remaining amount shall be deposited within one month from the receipt of this order. The office is directed to send the copy of this order to both the parties through email. The record of this appeal is consigned to record room.

Sd/-

(Atul Kumar Garg)
Presiding Officer