BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 2, NEW DELHI

Appeal no. 104(4)2015
M/s. Mazda Cable Pvt. Ltd.
Vs.

APFC/RPFC, Delhi East

Counsels:

For Appellant:- Sh. Sumit Kumar, ld. counsel.
For Respondent:- Sh. S.N. Mahanta, ld. counsel & Sh. Deepak Kumar, A/R.

ORAL

Order Dated:- 13.10.2025

1. The appellant has preferred the present appeal assailing the order dated 27.11.2014 passed by the Assistant P.F. Commissioner, Delhi East **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.5,26,300/-for belated payments made by the appellant establishment. 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.2,82,558/-. Further at the time of admission of this appeal, this tribunal had ordered that the appellant is supposed to deposit assessed amount u/s 7Q of the Act as order u/s 7Q is not appealable before this tribunal. In compliance of the order of this tribunal appellant has deposited the whole amount assessed u/s 7Q and he has pressed his appeal qua the order passed u/s 14B only.

2. Appellant has assailed the order on several grounds inter-alia stating that the appellant is in the business of cable supply network which is a type of business where monthly charges are collected from the customers/ users. He further submitted that the finding in the impugned order is clearly based on conjectures and surmises which

does not bear any co-relation with the facts of the present case as the ld. respondent authority erred by not considering into depositing of challans showing marginal delay by the appellant company fulfilling the demand assessed u/s 7 A of the Act. The delay so occurred was due to the financial crisis as the establishment was closed in 2005 on account of huge outstanding receivable to the company. Ld. Counsel for the appellant further submitted that the respondent authority failed to appreciate that the appellant had deposited all the shares of every month regularly, though, in some months there was a late payment ranging from several days to months. It is the submission of the appellant establishment that there were few employees whose contributions were being deposited in their PF accounts previously and during the period of 07/1997 to 09/2006, the appellant was facing financial crisis and that is why the stipulated contribution of these employees could not be deposited in time. However, the appellant establishment showing bonafide, has deposited their contributions belatedly on different dates during the period 2002 to 2009. The delay in deposit should be treated as a technical delay and not as a malafide on the part of the appellant. Stating these averments, ld. counsel for the appellant has prayed for waiver of the damages. It is also pointed out by the ld. counsel for the appellant that the notice for depositing the damages and interest was issued on 13.03.2014 which is after a considerable delay and is in total violation of the provisions of **chapter 5 of the Manual of Accounting Procedure (MAP).** The provision in the said chapter casts the duty upon the office of the respondent to inform the appellant about belated payment of EPF dues & imposition of damages along with the interest on such belated payments every month.

3. During the course of oral arguments, again the ld. counsel for the appellant pressed that the ld. respondent initiated the proceedings after seventeen years and the delay is on the part of the ld. respondent in conducting the quasi-judicial enquiry which is in total violation of the respondent's own circular issued on **28.11.1990**.

4. Per contra, the counsel for the respondent has rebutted the argument submitting his written reply followed by written arguments 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.

5. Ld. Counsel for the respondent also 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. His further contention is that the appellant himself had admitted the delay of PF contribution which shows the mens rea on part of the appellant. The order has been passed following the principal of natural justice keeping in view the pious object of the social security legislation and safeguarding the interest of the employees of the appellant establishment. Stating these averments, ld. counsel for the respondent has prayed to dismiss the present appeal.

6. 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:-

S.No.	*Period Of default*	*Rate of damages (percentage of arrears per annum)*
(1)	*(2)*	*(3)*
(a)	*Less than 2 months*	*Five*
(b)	*Two months and above but less than four months*	*Ten*

(c)	*Four months and above but less than six months*	*Fifteen*
(d)	*Six months and above*	*Twenty five*

It is also necessary to go through the provision of chapter 5 of the manual of accounting procedure which is reproduced hereunder for the sake of convenience:-

<u>CHAPTER 5 LEVY OF PENAL DAMAGES ROLE OF ACCOUNTS BRANCH</u>:

'5.1.1. The subject matter relating to levy of Penal Damages IS dealt both in the Accounts: section and also in a centralised Penal Damages Cell in the Regional Sub-Regional offices, which is treated as part of enforcement.

5.1.2. The role of Accounts branch is restricted only to the extent of detecting the Employers, <u>who belatedly' deposit their dues and to furnish the details thereof to the Penal Damages Cell every month, for initiating action under section 14-B of the Act read with relevant provision of the Schemes.</u>

5.1.3. All the covered establishments are required to pay the dues within 15 days of the close of every month. If the amount is not deposited within the stipulated time (including the 5 days grace period), Penal Damages, not exceeding the amount of arrears can be imposed under section 14-B of the Act.

<u>5.2.1. ROLE OF EDP--PREPARATION OF PENAL DAMAGES STATEMENT</u>: The EDP Cell with reference to the input documents viz. (duplicate) Challans fed under the CRAS (Computerised Receipt Accounting System) Software generates an output Report viz. Accounts Group Task-holder-wise Damages statement in respect

of the amounts paid by the Employers beyond the due date, in the following format.

Statement of Damages for the month of:-____ Account Group_______

Sl.No. Estt. Code No. Month AlC No.___

Amount Received Due date ___________

Date of Remittance No. of days % of P.D.__________

Amount of PD Total Due________________________

5.2.2. The correctness of the, above statement should be verified by the accounts branch with reference to the Dues, etc. recorded in the DCB .(Demand, Collection & Balance) Register (Revised)

This statement with due certificate of verification should be sent to Penal Damages Section, to initiate further action to levy Penal Damages. The fact of forwarding the Penal damages statement to Penal Damages section should be noted in the DCB register under the initials of section Supervisor Assistant Accounts officer. The levy order, on its receipt from 5/1Penal Damages section, should be taken as dues from the establishment and enter in the DCB Register. The outstanding Penal Damages dues should be carried over till its realisation.

5.2.3. The Employers are required to deposit the Penal Damages in the respective accounts through the prescribed Challans, showing the amount against the column viz. Penal Damage and the period for which

Penal damages paid. The receipted challans toward Penal Damages should be noted both by the Penal damages section and the concerned section. Where the Employers remit the Penal damages alongwith the current- dues, without specifying in the challan, such remittances, in excess of the current dues, should be verified with the DCB register. On no account contribution received in excess of dues should be adjusted /intimated to the Employer without the written orders of Assistant Provident Fund Commissioner-in-charge of Penal Damages section.

5.2.4. The EDP Section should also furnish list of depositors towards Penal Damages dues, with period, amount, date, to the Penal Damages cell every month.

5.3. The accounts Section are not required to treat the following as belated deposits:-

"Cheque/demand draft presented by the Employer to the State Bank of India on or before the due date, even If the deposit is credited after the due date. (The date of presentation of Cheque as indicated in the challan or as verified from the acknowledgement given by the Bank or in the Establishment's letter, forwarding the Cheque or in the Despatch Register may be taken as a proof).

"Note:- The remittance made on the day following the period of grace period will attract Penal Damages even where the period of grace falls on. Bank Holiday, etc.

5.4. The procedure for levy of Penal Damages and the role of Penal damages section will be dealt in Enforcement Manual.

8. Now coming to the present appeal, notice attached with the appeal by the appellant reflects that the notice was issued for the

period 07/1997 to 04/2013. Further perusal of the calculation sheet attached reveals that the delay is sporadic in nature. From the record it is reflected that the payment of 03/2002 was deposited on 17.12.2009. Delay in another month was in 03/2003, 11/2003, 03/2004, 02/2006, 02/2007, 06/2007, 03/2010, 04/2010, 05/2010 and so on. In between the appellant had been regular in making the payment. In whole period of eight to ten years there were only ten defaults. The appellant has been regular in payments for the remaining hundred months. So the Ld. RPFC should take note of this fact while assessing the damages.

9. Now another 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 10 to 17 years department had used to impose damages for late payment.

10. Therefore, the notice issued for levying the damages and interest for seventeen years is unreasonable and is liable to be set aside for the period from **07/1997 to 02/2011**. The entries in the demand notice starting from the month of 03/2011 up to 04/2013 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 03/2011 up to 04/2013 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