

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

D-2/02/2023

M/s. Wearwell India Pvt. Ltd. vs. APFC/RPFC, Noida.

Present: Sh. S.K Khanna, Ld. Counsel for the Appellant.

Ms. Kavya Dixit, Proxy Counsel for the Respondent.

Order dated-06.10.2025

1. Appellant has assailed the order dated 09.02.2023, passed by the Ld. Regional Provident Fund Commissioner under section **14B & 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred as "the Act")**, wherein he has assessed the dues in regard to the damages and interest to the tune of Rs. 4,59,740/- as well as the amount of Rs. 3,98,294/- respectively, for the period from 05.01.2020 to 08.04.2022. Appellant has challenged the said order on several grounds inter-alia; it was passed in violation of principles of natural justice, in as much as the submissions of the appellant were not considered in a fair and judicious manner; respondent passed the impugned order in contravention of the judgment of the Hon'ble Supreme Court in the case of **M/s Organo Chemical Industries & Anr. Vs Union of India, (1979) 4SSC 573**, wherein, while interpreting unamended section 14B of the Act, it was held that the damages as per section 14B are compensatory to compensate the loss of interest and penalty for the default; respondent passed the impugned order without arriving at the finding of mens rea on the part of the appellant; respondent passed the impugned order in derogation of the circular dated 15.05.2020 issued by the Head Office of the EPFO; respondent passed the impugned order dehors the powers vested in him under section 14B of the Act. He further submits, delay in remittance on the part of the appellant is not intentional and deliberate, but due to the

complete breakdown of business activities of the appellant due to Covid-19 pandemic.

2. Per contra, respondent has filed the reply to the appeal, opposing the prayer. He had first narrated the object of the legislation i.e. **Employees' Provident Funds & Miscellaneous Provisions Act, 1952**. He further submitted that appeal is liable to be dismissed, as there was an admitted delay in remitting PF contributions. It is pertinent to mention that, once the appellant was brought under the purview of the Act, all delayed remittances attracted a levy of damages under section 14B of the Act. Impugned orders are reasoned and speaking orders, passed after affording the reasonable opportunity to the appellant establishment to submit its submissions. He further submitted that appeal is liable to be dismissed.

3. I have heard the argument at bar and gone through the record. Before proceeding further, provisions of section 14B and 7Q of the Act is required to be reproduced herein-

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 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 [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 [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.]

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.]

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	Ten

	<i>less than four months</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>

4. It is a matter of record, since the Ld. Predecessor of this Tribunal has not given any stay in regard to appeal under section 7Q of the Act, therefore, appeal qua 7Q stands dismissed.

5. Now, come to appeal under section 14B of the Act. As per records, respondent issued a notice dated 08.04.2022 for levying he damages for the period from Sep, 2019 to Jan, 2022, asking the appellant to pay damages to the tune of Rs. 4,70,935 for delayed remittance for the above said period. Subsequently, a revised notice was issued vide letter dated 06.10.2022, whereby he has asked the appellant to pay the damages to the tune of Rs. 4,59,740/-.

6. Appellant has contended that due to the Covid-19 pandemic, which caused a complete breakdown of the business activities, the respondent had taken care of consideration of the covid-19 pandemic. However, he had he had been only given three months relief.

7. It is a matter of fact that the second wave of the Covid-19 pandemic, which was spread from Jan, 2021 to May, 2021, was more dangerous than the first. The three months period granted by the respondent is not sufficient. Respondent should have exercised more caution in granting the damages, because the word 'may' is used. If he himself had given the relaxation for the remittance of payment of wages, then why not he has exercised his discretion in relaxing or reducing the rate of damages, taking into consideration the severity of the second wave of the coronavirus.

8. In these circumstances, this Tribunal has decided to waive the damages levied for the remittances made between the periods from March,

2020 to May, 2021. Accordingly, appeal stands partly allowed. Appellant is directed to deposit the damages levied as per the notice dated 08.04.2022 for the period 09/2019 to 02/2020 and 06/2021 to 01/2022, 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)