

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 2 DELHI**

D-2/41/2022

M/s Sterling Mobikes Pvt. Ltd. vs. APFC/RPFC Gurgaon.

Present: Sh. S.K Khanna, Ld. Counsel for the Appellant.
Sh. Satpal Singh, Ld. Counsel & Sh. Pradeep Batra, A/R for the Respondent.

Order dated-30.10.2025

1. Appellant has assailed the order dated 17.10.2022 passed by the respondent under section 14B and 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred as an "Act") wherein the respondent has levied damages and interest of Rs. 9,92,288/- and Rs. 5,51,208/- respectively for the delay in remittance of PF dues for the period 01/07/2016 to 06/07/2021 respectively.
2. It is the appellant case that being the Private Limited Company registered under the Companies Act, it is covered under the Act. He was complying with the provision of the Act on the basic pay and the dearness allowance as per the understanding of the appellant and of the EPFO as per the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of M/s Bridge & Roof Co. (India) Ltd. vs. Union of India, MANU/SC/0274/1962. Respondent has never raised any objection regarding non-payment of PF contribution on the allowances. However, subsequently, Hon'ble Supreme Court of India in the case of Regional Provident Fund Commissioner vs. Vivekanand Vidyamandir, decided on 28.02.2019 reported in MANU/SC/0263/2019 held that allowances which are uniformly paid across the board to all its employees in the same category will also attract PF contribution.
3. The Head Quarter of the EPFO issued directions vide circular no. C-I/ (33)2019 Vivekanand Vidyamandir/717 dated 28.08.2019 not to initiate

proceedings in pursuance of the judgment in Vivekanand Mandir for the establishments which were not defaulters in payment of dues. Adjudicating authority under the Act in contravention of its own circular had determined the dues under section 7A of the Act vide order 20.02.2020 amounting to Rs. 10,55,447/- for the period 09/2014 to 03/2018. Appellant in order to buy peace though was not liable to pay the dues, even, paid the employee's share which was not deducted from the wages of the workers from their own resources.

4. It is further the case of the appellant that Head Quarter of the EPFO issued directions vide circular no. C-1/Misc/2022-21/Vol.-I/1112 dated 15.05.2020 that damages will not be levied for the delay in remittance of dues during the period of lock down due to pandemic of Corona Virus and considering the Disaster Management Act, 2005. The period of delay 03/2020 to 05/2021 is covered by the period of lock down attracting no damages. However, Assistant PF Commissioner, Gurugram(W) issued show cause notice no. GN/GGN/0033962/000/Enf521/Damages dated 06.07.2021 for levy of damage under section 14B and interest under section 7Q of the Act for the delayed remittance of contribution for the period 09/2014 to 05/2021. The delayed remittance alleged is for the payment on allowances due to retrospective application of the judgment of Hon'ble Supreme Court in the case of *Vivekanand Vidyamandir* and for the period covered by the pandemic. He made prayer that impugned composite order dated 17.10.2022 be set aside and recalled because it suffers from jurisdictional infirmity as the respondent is not authorised to levy the damages in terms of notification S. O. No. 1553 dated 17.04.2002. The respondent is not authorised under section 7Q of the Act to levy interest. He further submitted that impugned order is not sustainable in law as the respondent did not consider that the delay in payment of dues was not intentional and deliberate but due to the retrospective application of the judgment of the Hon'ble Supreme Court in the case of *Vivekanand Vidyamandir*.

5. Respondent passed the impugned order without considering the fact that the appellant could not recover the employee's share from the

wages of the employees and paid the same from their own resources. Respondent passed the impugned order in derogation of the circular No. WSU/9(1)2013/Settlement of claims/26308 dated 12.01.2017 issued by the Head Quarter of the EPFO providing for 5 days of grace due to technical glitches. Respondent passed the impugned order without considering the fact that delay in payment of dues from 03/2020 affected and crippled the entire economic activities of the world. Appellant submitted that order be recalled and set aside.

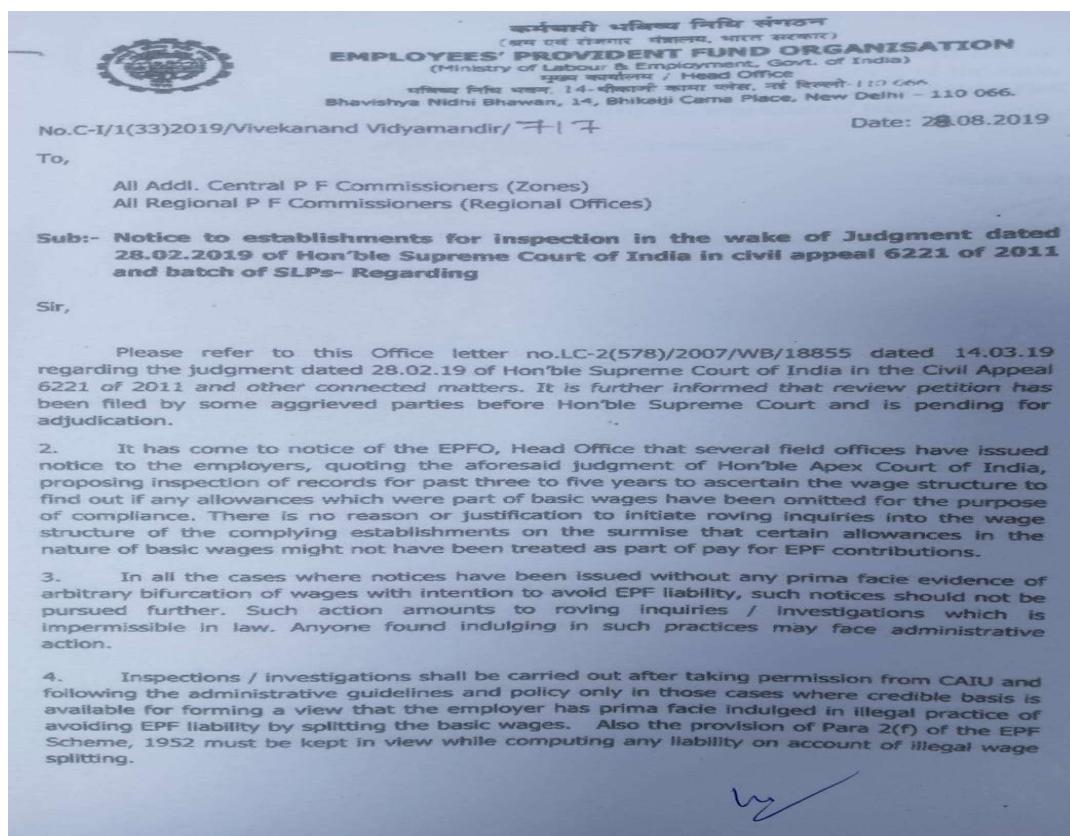
6. Respondent has filed the reply of appeal stating that two separate orders were passed by them, hence, these are not the composite orders and appeal U/s 7Q is not maintainable. On merit he had admitted the para no. 1 to 5 of the appeal. So far so, the para no. 6.2 is concerned, he submitted that the establishment did not pay EPFO dues for which enquiry U/s 7A was initiated where the amount of Rs. 10,55,447/- was calculated vide order dated 20.02.2020. So far so, the para no. 6.5 is concerned, he submitted that establishment representative never raised any objection in the enquiry regarding the assessment to the tune of Rs. 10,55,447/-. Para no. 6.9-10 is denied by the respondent and submitted that the instruction of 5 days' grace period is contained in manual of accounting procedure in para (1)(3) was withdrawn w.e.f. 02/2016, with the approval of competent authority. He submitted that appeal is devoid of any merit and liable to be dismissed.

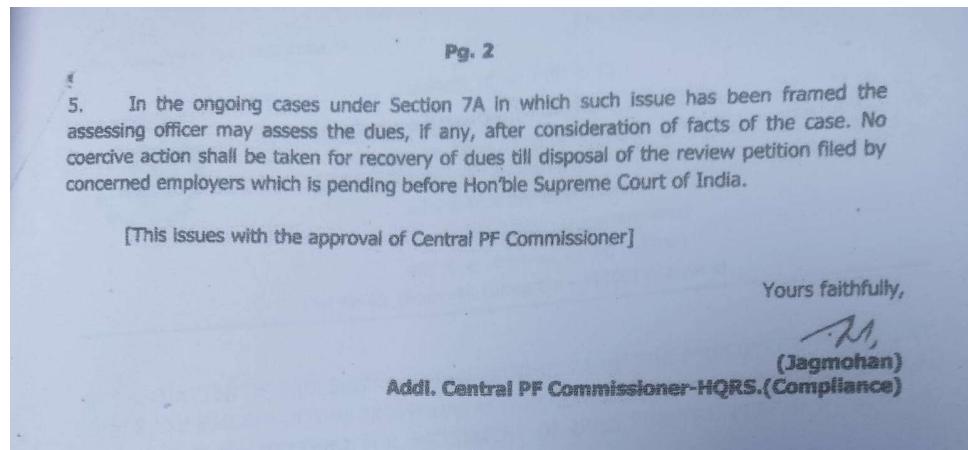
7. I have heard the argument at par and gone through the impugned order. The whole case of the appellant revolves around the fact that respondent authority has illegally determined the amount Rs. 10,55,447/- under section 7A of the Act for the period 09/2014 to 03/2018 on the special allowance in violation of its own circular no. C-I/(33)2019 Vivekanand Vidyamandir/717 dated 28.08.2019, though he is not bound to pay, however, he had paid the same. His case is that beside the payment being made under section 7A, department has again proceeded to levy the damages on the belated payment of the contribution of the employee on special allowances which is illegal itself. Secondly, he has assailed the order attracting the delayed remittance of payment in the covid period, though,

the department had exempted the establishment of paying the same. Thirdly, he had challenged the withdrawal of the grace period by the Additional Commissioner of Provident Fund, though, the grace period had been provided by the Central Board of Trustee (CBT). The order sheet attached in the appeal has not been disputed by the respondent shows that the department has assessed the delayed payment for the period 09/14 to 03/18. Entire payment of contribution has been made in pursuance of the determination under section 7A, inquiry heard in the light of *Vivekanand Vidyamandir* case in the year 2019.

8. Respondent department has not denied the existence of its own circular dated 28.08.2019, however, he had submitted that during 7A inquiry, establishment has not raised any objection, though, the AR had been representing.

9. In this respect, the circular dated 28.08.2019 is required to be pasted herein:





10. By issuing of the above said circular, it has been mentioned that the department had instructed its officer not to held roving inquiries in respect of the allowances, if the appellant establishment has been paying the PF contribution in time. If the circular is in knowledge of the department, then certainly, he should have refrain themselves for initiating any inquiry without the approval of the Central Provident Fund Commissioner, however, it has not been done so. Their plea is that the appellant establishment has not raised any objection during the course of inquiry under section 7A, does not give any leverage to the respondent for levying further damages to the appellant establishment for belated payment on the special allowance. Therefore, the order regarding levying the damages for the belated payment on the said period from 09/14 to 03/18 is not sustainable.

11. Now, there is another aspect that said order also contained the damages on belated payment under section 14-B from 15.03.2020 onwards which attracts the damages from the period of 15.02.2020 to 05/21. The period of damages varied from 120 days to 270 days. It is in common knowledge that at the time of breaking out of Covid-19 pandemic, entire business activity has been stopped in the country that was a complete lock-down. Even, the wages have been paid to the labourers/employees belatedly. Regional Provident Fund Commissioner or the authority mentioned therein under section 14-B is empowered to waive the damages because the word "may" have been used. Generally, it is stated by the respondent authority through their respective counsel that the respondent

has no option except to levy the damages as per rate prescribed in the table. The purpose of giving hearing is only to clarify whether any challan has not been left out for the purpose of calculation of damages. However, this is a misnomer. If the respondent had issued this circular for exempting the establishment for month during covid-19 situation for paying the damages on the belated payment, then, certainly the department or the authority have been empowered to look into that aspect, however, it has not taken any consideration and started levying the damages for the period in which the pandemic has been spread. Even in the beginning of 2021 the covid-19 second wave was more dangerous than the earlier one broke out in the beginning of 2020.

12. In these circumstances, order passed by the provident fund authority in regard to the levying of damages under section 14-B of the Act from 15.02.2020 to 05/2021 is set aside and recalled.

13. The other plea of the appellant is that the respondent authority has grossly erred in assessing the damages where the amount has been deposited within the grace period. According to him, the five days grace period was given by the Government of India after approving the decision taken by the CBT held on 13.01.1964. However, the Additional CPFC has withdrawn the said grace period by issuing circular no. WSU/09(1)2013/settlement dated 08.01.2016 with the approval of CPFC. According to the appellant's counsel, CPFC has not been empowered to issue the circular withdrawing the grace period, which was allowed by the Government of India after approving the decision taken by the CBT. According to him, it is only the Government of India who can withdraw not the CPFC.

14. There is no dispute about the granting of grace period by the Government of India as well as withdrawal of the grace period by issuing the circular. The circular cannot supersede the decision taken by the Government of India approving the decision of the CBT. Therefore, the damages assessed in the calculation sheet in respect of the payment done

within five days of the grace period by the Assessing Authority is set-aside and recalled.

15. In view of the above terms, appeal stands disposed of. If any dues remain as per order passed by the respondent, same shall be deposited after adjusting the amount of Rs. 2,00,000/- deposited by the appellant in compliance of the condition for stay within four weeks. If any excess amount is deposited by the appellant, the same shall be returned forthwith by the respondent.

Sd/-

Atul Kumar Garg
(Presiding Officer)