

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL**

**PRESENT:** Justice Ananda Kumar Mukherjee (Retd.),  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol

**EPFA No. 05 of 2015**  
[ATA 838(15) of 2015]

**M/s. Gamuda WCT (I) Private Limited, Kolkata** ..... Appellant.

Vs.

**Regional Provident Fund Commissioner, Durgapur** ..... Respondent.

**ORDER**

**Dated: 27.09.2023**

Mr. S. K. Khanna, Adv.

Mr. C. K. Chandra, Adv.

Mr. B. Banerjee, Adv.

..... for the Appellant.

Mrs. Mousumi Ganguli, Adv.

..... for the Respondent.

**1.** This appeal has been preferred under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against the impugned order dated 08.06.2015 passed by the respondent under Section 14-B and 7-Q of the EPF Act for levying damages of Rs. 24,42,824/- under Section 14-B of the EPF Act and interest of Rs. 10,24,840/- under Section 7-Q of the EPF Act against the appellant for delayed remittance of Provident Fund dues in respect of its employees for the period from 02/2002 to 11/2007.

**Contd. Page - 2**

**2.** The fact of the appellant's case in brief, is that M/s. Gamuda WCT (I) Private Limited, Kolkata, the appellant establishment is a registered company under Indian Companies Act, 1956 having its registered office at Arihant Building, 2<sup>nd</sup> Floor, 53A, Mirza Ghalib Street, Kolkata – 700016. The appellant establishment is covered under the provisions of the EPF Act, and the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as EPFS). A Provident Fund code was allotted to the appellant establishment by the Respondent, bearing Provident Fund Code No. WB/DGP/39283. The address of the registered office of the appellant was changed and the matter was informed to the respondent by letter dated 16.03.2006. A Show Cause Notice dated 12.03.2014 was issued by the respondent for payment of damages of Rs. 20,50,521/- and interest of Rs. 6,70,998/- for the period from 03/2002 to 08/2008. The Notice was sent to the Camp Office of the appellant, which was closed since 2006. On 28.10.2014 the respondent sent another Show Cause Notice along with the earlier Show Cause Notice. The authorized representative of the appellant became aware of the proceeding on receiving letter no. WB/SRO/DGP/ENF/39283/260/3625 dated 26.05.2014 / 09.06.2014 and replied to the same by issuing letter no. GWCT/04/PF/2014/1181 dated 30.06.2014, informing that appellant establishment was engaged in construction of the National Highway – 2, in the Panagarh–Palsit–Dankuni section in 2002 and completed their job in 10/2005. The appellant company did not take up any other contract and has no operation since then.

**3.** In respect of the claims made by the respondent for belated remittance of Provident Fund dues, the appellant stated that the entire Provident Fund contribution of Rs. 25,81,440/- as assessed by the respondent has been deposited under Section 7-A of the EPF Act and it also remitted the entire interest of Rs. 6,95,619/- within fifteen days and informed the office of the respondent vide letter dated 28.05.2007 which has been enclosed as Annexure A7. On

30.06.2014 the appellant submitted a letter addressed to the respondent contending inter alia that some Files and Registers containing records and documents prior to 2007 were misplaced in course of shifting the registered office to Kolkata and the same could not be traced. Furthermore, the persons who were looking after the Payroll and Provident Fund matter have resigned from their job and old challans were not traceable.

**4.** After receiving the Summons from the respondent, the appellant's representative appeared 05.12.2014 and submitted their written statement disclosing that the appellant was unable to verify the records and the challans for the earlier period from 2002 onwards and requested for production of challans by the respondent in course of proceeding under Section 14-B. The respondent however could not produce the old challans regarding payment of dues under Section 7-A as well as the inquiry file in respect of 7-A and 7-Q order bearing No. SRO/DGP/ENF/WB/39283/7A dated 11.05.2007. According to the appellant, respondent failed to prove the default under Section 14-B of the EPF Act nor could the respondent prove the default when the matter came up for hearing on the last time on 28.05.2015. It is argued that the respondent without considering appellant's contention and verbal submission has arrived at a finding by passing a non-speaking / non-reasoned order dated 08.06.2015.

**5.** Being aggrieved with the impugned order, instant appeal has been filed on the grounds inter alia as follows:

- (i) That the respondent while passing the impugned order did not consider the fact that the appellant has deposited Rs. 6,95,619/- as interest under Section 7-Q of the EPF Act in May 2005.
- (ii) That the impugned order has not specified the basis on which the calculation of damages has been made.

- (iii) That the assessment of damages for the period from 02/2002 to 11/2007 has been made after long lapse of time causing prejudice to the appellant establishment. It is contended that long delay has been considered unreasonable. Appellant relied upon various decision of the Hon'ble High Court of Orissa in the case of **Orissa Forest Development Corporation Limited vs Regional Provident Fund Commissioner [1995 I LLJ 936]**, the Hon'ble High Court of Himachal Pradesh in the case of **H.P. Agro Industries Corporation Limited vs Regional Provident Fund Commissioner [1999 III LLJ 469]**, and the Hon'ble High Court of Judicature at Allahabad in the case of **I.O.L. Limited vs Union of India and Others [2011 LLR 100]**.
- (iv) That the respondent did not consider the mitigating circumstances at the time of imposing damages.
- (v) That the interest under Section 7-Q is included under Section 14-B as per the table and additional interest could not be charged as it amounts to 'double jeopardy' under Article 20(2) of the Constitution of India.

In support of such contention appellant referred the decision of the Hon'ble High Court of Delhi in the case of **M/s. Systems and Stamping & Another vs Employees' Provident Fund Appellate Tribunal & Others [2008 LLR 485]**, where the Hon'ble High Court consider the Circular dated 29.05.1990 and directed the respondent to assess the damages as per the Circular. The respondent in this case not having consider that the interest has already been paid, the impugned order is liable to be set aside.

**6.** Though the appeal has been preferred against the order of the Regional Provident Fund Commissioner, S.R.O. Durgapur, the reply has been filed by the Assistant Provident Fund Commissioner, Durgapur without impleading himself as Respondent. It is the case of the respondent that the appellant did not deny

belated remittance of Provident Fund dues for which penal damages of Rs. 24,42,824/- was assessed under Section 14-B and an interest of Rs. 10,24,840/- under Section 7-Q of the EPF Act for the period from 02/2002 to 11/2007.

7. Respondent stated that Summons / Notice of proceeding was duly served upon the appellant but the appellant failed to file any objection. It is contended that the legislature did not deem it fit to prescribe any period of limitation for recovery of damages under the EPF Act and the provisions of Indian Limitation Act, 1963 did not apply in Provident Fund matters under the EPF Act as such amount is due to a Trust Fund. It is the case of the respondent that failure to make payment of Provident Fund dues within the prescribed period laid down in the Paragraph – 38 of EPFS, the employer would be liable to pay damages under Section 14-B of the EPF Act. Referring to the decision of the Hon'ble Supreme Court of India in the case of **Organo Chemicals Industries and Another vs Union of India and Others [1979 (4) SCC 573]**, the respondent contended that the object and purpose of Section 14-B of the EPF Act is to authorized Provident Fund Commissioner to impose exemplary damages to prevent the employer from making default. It is urged that the expression 'damages' appearing in Section 14-B of the EPF Act does not mean actual loss to the beneficiaries. It is actually a penalty imposed on the employer for breach of statutory obligation and the object is to punish the recalcitrant employers on the aforesaid grounds. The respondent has prayed for dismissal of the appeal.

8. The moot point for consideration is whether the impugned order is tenable under the facts and circumstances of the appeal and the law applicable to the subject matter.

9. The appeal came up for hearing on 17.03.2023, 13.04.2023, and 22.06.2023. Learned advocates for the appellant were present on 17.03.2023

and advanced their argument. On 22.06.2023 the appeal was finally heard in absence of learned advocates for the appellant.

**10.** Mr. S. K. Khanna, learned advocate for the appellant argued that from Notice / Summons to appear dated 12.03.2014 it appears that the appellant establishment was notified for delayed remittance made for the period from 23.03.2002 to 13.08.2008 but in the impugned order the period of coverage exceeded the notice period as assessment has been made for the period from 02/2002 to 11/2007, without providing any opportunity to submit any objection for travelling beyond the notice period. The impugned order is flawed on account of using old rate of damages from 2002 to 2008 i.e. 17% to 37% and not the prevailing rates of damages according to the Sliding Table at the time of passing the order on 08.06.2015. Learned advocate argued that an interest of Rs. 6,95,619/- which was already paid by the appellant in May 2007 under Section 7-Q of the EPF Act was not taken into consideration. Therefore, the impugned order is liable to be set aside.

**11.** In reply learned advocate for the respondent, submitted that M/s. Gamuda WCT (I) Pvt. Ltd. has been allotted a Provident Fund Code No. WB/DGP/39283 and the establishment has failed to deposit the Provident Fund contribution under Section 6 of the EPF Act read with Paragraph – 38 of EPFS within the stipulated period of fifteen days from the closure of the month. Therefore, the appellant is liable to pay damages and interest of the said amount. Learned advocate for the respondent argued that appellant has not disputed delayed remittance of Provident Fund dues under Section 7-A of the EPF Act and the respondent authority is vested with the jurisdiction to impose damages under Section 14-B of the EPF Act and interest under Section 7-Q of the EPF Act. It is argued that delayed initiation of proceeding would not absolve the appellant from its liability. Learned advocate for the respondent contended that the damages

were assessed at the prevailing rate of interest which is indicated in the Calculation Sheet and no objection was raised by the appellant at any point of time.

**12.** I have considered the facts and circumstances and augments advanced by the appellant and respondent. The appellant did not submit any reply to the Notice for proceeding under Section 14-B of the EPF Act for the period from 23.03.2002 to 13.08.2008. It appears from the Notice that damages were assessed at the rate of 17% to 37% up to 11/2007 and not at the prevailing rate i.e. 5% to 25% demonstrated in the Notice. I also find that the respondent authority has travelled beyond the notice period by one (1) month at the time of levying damages for the month of 02/2002. For whatever the small period, it might be there has been a violation of natural justice by not including the period at the time of issuance of the Notice. The appellant has claimed that an interest of Rs. 6,95,619/- has already been paid by the appellant in 05/2007 but no such reflection regarding payment has been made in the impugned order.

**13.** Notification No. G.S.R. 689(E) dated 26.09.2008 has amended the EPFS lays down as follows:

- “ 1. (1) *This Scheme may be called the Employees' Provident Funds (Second Amendment) Scheme, 2008.*
- (2) *It shall come into force on the date of its publication in the Official Gazette.*
2. *In the Employees' Provident Funds Scheme, 1952, for sub-paragraph (1) of paragraph 32A, the following sub-paragraph shall be substituted, namely:-*  
*“(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 in the table below:-

**TABLE**

S. No.	Period of default	Rates 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.” ”

**14.** In the case of **Andrew Yule and Company Limited vs Regional Provident Fund Commissioner and others [C.O. No. 15347 (W) of 1992]**, the Hon'ble High Court at Calcutta held that :

*“ By the amendment provision of Section 14B of the Act read with paragraph 32-A of the Scheme with effect from September 1, 1991, the legislature has manifested its intention to divest the respondent No. 1, the concerned authority, of the power to impose penalty according to its discretion from the aforesaid day; on the other hand, it has mandated the respondent No. 1 to assess penalty in accordance with the chart shown in paragraph 32-A of the Scheme notwithstanding the fact that the delay or default occurred earlier.”*

It was held that the respondent assessed penalty at the rate which was in excess of the rates in Paragraph 32A of EPFS. The same principle applies to the present

case where the respondent has acted in excess of its authority in demanding damages in excess of the prevailing rate, which should have been between 5% to 25% and not 17% to 37%.

**15.** In the case of **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996]**, the High Court at Calcutta in Paragraph – 29 held that :

*“ The effect of amendment that was made in Section 14-B of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by Section 20 of Amendment Act 33 of 1988 which came into force with effect from 01.09.1991 as well as the insertion of Paragraph – 32A of Employees' Provident Fund Scheme, 1952 w.e.f. 01.09.1991. Both before and after the amendment it has been optional with the Regional Provident Fund Commissioner to levy and recover the damages by the way of penalty. Prior to the amendment, he had the power to levy the damages at the rate, the maximum of which was fixed at 100%. It did not, however, prescribe any minimum rate. He was free to impose damages at such rate as he thought fit. After the amendment his power to levy the damages up to the maximum rate of 100% appears to have been curtailed. He is now to follow the sliding table incorporated in paragraph 32-A of the scheme for applying the rates for levy of damages according to the periods of default specified therein. The proceeding under Section 14-B was not at all pending at the time when the relevant amendment was made and para 32-A of the Scheme was introduced. Admittedly, such proceeding was initiated for the first time only in the year 1996 when the petitioner was served with a notice to show cause on 16.04.1996. The defaults for which the writ petitioner did incur the liability for such damages, did occur at a time when the amendment was yet to be made. It is true that the right to levy the damages had already accrued to the Regional Provident Fund Commissioner long before the amendment was made. But such right or the liability was not sought to be enforced till the issuance of said notice dated 16.04.1996 when the amendment had already been brought into force.”*

The proceeding under Section 14-B and 7-Q of the EPF Act commenced on the basis of Notice dated 12.03.2014 and the impugned order was passed on 08.06.2015. The prevailing rate of damages were between 5% to 25%, depending upon the period of delay in remittance. It is a well settled law that there is no period of limitation for the purpose of assessing damages and no period of limitation has been laid down in the EPF Act. Therefore, the respondent authority has the jurisdiction to initiate proceeding for recovery of damages even after laps of time. I am therefore inclined to hold that no illegality is committed by initiating this proceeding even after long lapse of time.

**16.** The impugned order is found silent about the amounts contributed as Provident Fund dues under Section 7-A of the EPF Act and the different periods when such deposits were made. Therefore, the respondent has not been able to demonstrate the foundation of their assessment.

**17.** The question regarding inclusion of interest in the rate of damages is not involved for adjudication in this appeal. Therefore, the principles laid down in the case of **M/s. Systems and Stamping & Another (Supra.)** and decision in the case of **Roma Henny Security Services Pvt. Ltd. vs Central Board of Trustees, E.P.F.O. [W.P. (C) 831 OF 2012]** do not have any application to the facts and circumstances of this case which are distinguishable from the facts of the present case. There has been development of law in this matter which underwent amendment in the EPF Act, whereby the damages under Section 14-B of the EPF Act at the prevailing rates could be levied in addition to the interest of 12% per annum under Section 7-Q of the EPF Act and the Circular dated 29.05.1990 would not have any application after incorporation of Section 7-Q of the EPF Act. The answer to the dispute involved in the present case is embedded in the principles laid down by the Hon'ble High Court at Calcutta in the case of **Atal Tea Company Limited and Another (Supra.)** which has noted that the

amendment in Section 14-B of the EPF Act so far as it conferred the discretionary power to determine the rates at which the damages would have to be levied, can be said to have been repealed by implication. The amendment not having provided any saving clause expressly. It was clear that the discretionary power of the authority to levy damages was curtailed by virtue of the amendment. The intention of the legislature in amending Section 14-B and introducing relevant Scheme was to curtail the discretionary power of the levying authority and when the authority enforcing the right or liability which had accrued prior to the amendment, had been divested of the discretionary power which he earlier had, the levy of damages was to be governed by the amended provisions of Section 14-B of the EPF Act read with Paragraph – 32A of the EPFS.

**18.** The summons in the proceeding and the impugned order reveals that the Provident Fund commissioner had exceeded its jurisdiction and acted in an arbitrary illegal manner by applying rates of damages which have already been amended and did not exist at the time the assessment of damages. The impugned order therefore is not sustainable under the facts and law and the same is liable to be set aside. the appeal is accordingly allowed on contest. The instant case is remanded to the Provident Fund authority for passing a fresh order after hearing the appellant establishment.

**19.** On a conspectus of the aforesaid facts and circumstances and the law involved I have no hesitation to hold that the respondent has assessed the damages amount on the basis of the rates which were not consistent with the sliding table which came into existence from 26.09.2008. The impugned order therefore is not found tenable and is liable to be set aside. The appeal is accordingly allowed on contest. The instant appeal is remanded to the Employees' Provident Funds authority for passing a fresh order after hearing the

appellant establishment. The respondent shall also clearly state if the claim of the appellant regarding payment of interest of Rs. 6,95,619/- in 05/2007 is correct or not. Opportunity be provided to the appellant to produce relevant documents before the respondent.

Hence,

**O R D E R E D**

that the appeal under Section 7-I of the EPF Act is allowed on contest. The impugned order No. WB/DGP/0039283/Enf 502/Damages/24465 dated 08.06.2015 is hereby set aside. The case is remanded to the respondent with a direction to hear the matter afresh in the light of my above observation and pass a fresh order after giving opportunity to the appellant to present their case for establishing the payment of interest claimed to be made by them. The respondent shall dispose the case preferably within a period of three (3) months from the date of communication of the order.

The appellant herein shall participate in the proceeding before the Employees' Provident Fund Authority on all dates fixed, failing which adverse presumption may be drawn by the respondent authority. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-  
**(ANANDA KUMAR MUKHERJEE)**  
Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.