

**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. 07 of 2015
[ATA 1202(15) of 2015]

M/s. Varsha & Co.

..... Appellant.

Vs.

Regional Provident Fund Commissioner, Durgapur

..... Respondent.

O R D E R

Dated: 31st July, 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. Instant appeal has been preferred by the appellant under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as EPF Act) against the impugned order dated 17.09.2015, passed in a proceeding under Section 14-B of the EPF Act for delayed remittance of Provident Fund dues of Rs.9,92,139/- for the period from 08/1999 to 07/2008 and an order for payment of interest of Rs.3,91,768/- under Section 7-Q of the EPF Act.

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2. A synoptical resume of the appellant's case is that the appellant establishment is covered under the EPF Act and the scheme framed thereunder. The respondent issued a Notice on 12.03.2014 directing the appellant to appear and show cause why the establishment defaulted in payment of contributions and charges in respect of Employees' Provident Fund Scheme 1952 (hereinafter referred to as EPFS), Employees' Pension Scheme 1995 (hereinafter referred to as EPS), Employees' Deposit Linked Insurance Scheme 1976 (hereinafter referred to as EDLIS), Administrative charges under Paragraph 38 of EPFS, and Administrative charges on EDLIS under Section 6-C of the Act, within the prescribed time and why damages at the rate specified in Paragraph 32-A of EPFS would not be levied for delayed remittance for the period from 01/2000 to 08/2008.

3. The appellant participated in the inquiry held on 15.09.2015 and submitted in details that the appellant establishment has already paid the damages and interest for the period involved in the present proceeding. The respondent without considering such submission, imposed damages and interest for the period from 08/1999 to 07/2008. It is the contention of the appellant that though the notice period showing delay in remittance was from 06.01.2000 to 22.08.2008, damages were levied for a period which transcend beyond the notice period and covered an earlier period from 08/1999 to 07/2008. The appellant claimed that the respondent has travelled beyond the scope of inquiry and deprived the appellant of the opportunity to explain the reasons for such delay in respect of the period for which the impugned order has been passed. Appellant assailed the impugned order on the ground that it is not a speaking order passed without application of mind and in contravention of settled principle of law on the subject matter. Appellant contended that the levy of damages stipulated for the period from 08/1999 to 25.09.2008 has been

imposed on the basis of rate of damages in the unamended Paragraph 32-A of EPFS. It is claimed that according to Notification: G.S.R. No. 689(E) dated 26.09.2008 issued by the Central Provident Fund Commissioner the interest is included in damages stipulated in the Paragraph 32-A of EPFS but in instant case interest has been imposed in addition to the damages under Section 14-B of the EPF Act. It is urged that the impugned order is in contravention of the law laid down by the Hon'ble High Court of Delhi in the case of **Systems and Stamping & Another vs Employees' Provident Fund Appellate Tribunal & Others [L.P.A. Nos. 562 of 2006 - 563 of 2006]** and the Special Leave Petition arising therein dismissed by the Hon'ble Supreme court on 16.07.2009. Appellant also relied upon a decision of the Hon'ble High Court of Delhi 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]**. The appellant further relied upon the decision of the Hon'ble High Court at Calcutta in the case of **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996]**, which entails levying of damages at the prevailing rate and not at the old rates. The appellant asserted that the respondent without taking into account the presence of mens rea imposed penal damages of Rs.9,92,139/- and interest of Rs.3,91,768/-. It is prayed that the impugned order dated 17.09.2015 be set aside and the respondent be directed to credit the amount already paid towards damages and interest.

4. Respondent contested the appeal by filing a reply under Rule 12 of the Tribunal (Procedure) Rules, 1997, contending inter-alia that the appeal is not maintainable against the respondent, a quasi-judicial authority and that department is a necessary party in the appeal. The respondent claimed that the impugned order has been passed strictly in accordance with the EPF Act and the appellant establishment having made default in payment of contribution to the

fund. As per Section 14-B of EPF Act read with Paragraph 32-A of EPFS and Paragraph 5 of EPS and Paragraph 8-A of EDLIS the Provident Fund authority is empowered to recover damages at the stipulated rates provided in Paragraph 32-A (Table) of EPFS and also realise interest at the rate of 12% from the date on which the amount became due till the date of actual payment. It is asserted that that the appellant had made belated payment of the dues and claimed that there were some overlapping period for which some payment has been made. The respondent authority after verifying the discrepancies and the overlapping period passed a final order taking into consideration the previous assessment order dated 14.01.2003 for the period from 08/1999 to 01/2001 and order dated 20.04.2007 for the period from 08/1999 to 03/2005. According to the respondent the Tribunal has no jurisdiction to entertain an appeal against order under Section 7-Q of the EPF Act and can only interfere with the quantum of damages determined in the inquiry. Relying upon the decision of the Hon'ble Supreme Court in the case of **Organo Chemicals Industries and Another vs Union of India and Others [1979 (4) SCC 573]** it is pointed out that Section 14-B of the EPF Act has been enacted to deter and thwart the employers from making default in carrying out statutory obligation to make payment of the Provident Fund. The respondent authority has acted within its jurisdiction and the appeal is liable to be dismissed with its cost.

5. Mr. S. K. Khanna, learned advocate for the appellant confined his argument to two issues i.e. the respondent has travelled beyond the period of Notice and assessed damages for the period from 08/1999 to 07/2008 without giving opportunity to submit any explanation. It is argued that there has been violation of natural justice and Provident Fund authority has failed to pass a reasoned order by not taking into consideration their submission that assessment of damages and interest has been made for an overlapping period

for which payments have already been made earlier. The second part of the appellant's argument is that since the respondent has assessed damages on the basis of previous rate and not on the prevailing rate as amended in the year 2008, the assessment so made is not valid. Learned advocate for the appellant in support of his argument relied upon the following cases :

(i) Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996] and

(ii) Andrew Yule and Company Limited vs Regional Provident Fund Commissioner and others [C.O. No. 15347 (W) of 1992]

6. Mrs. Mousumi Ganguli, learned advocate for the respondent argued that the Central Board of Trustees, Employees' Provident Fund Organization was a necessary party and without impleading the department the appeal would fail. Learned advocate argued that the respondent had taken into consideration the delayed remittance of Provident Fund dues and assessed the damages and interest which do not exceed the arrear amount. It is vehemently argued that the appeal filed against the order under Section 14-B of the EPF Act is without merit and the same is liable to be dismissed.

7. Having heard argument advanced by the respective parties and on considering the material contentions in the Memorandum of Appeal and in the reply, it appears to me that the Notice of appeal has been served on the authority who passed the order against which the appeal has been filed. Therefore, the appellant has filed this appeal in compliance to the provision of Rule 11 (8) (ii) of the Tribunal (Procedure) Rules, 1997. Accordingly, I hold that the appeal is maintainable in its present form and does not suffer due to non-impleading the Central Board of Trustees. The appeal challenging the impugned order dated 17.09.2015, having been filed on 14.10.2015, is within the period of limitation set out in Rule 7 (2) of the Tribunal (Procedure) Rules, 1997.

8. On a perusal of the impugned order dated 17.09.2015 it is gathered that the assessment made under Section 14-B of the EPF Act is for the period from 08/1999 to 07/2008, whereby the Provident Fund authority without giving an opportunity to the appellant establishment has travelled beyond the period of Notice dated 12.03.2014. It is stated in the Notice that on scrutiny of the records maintained in the office for the remittance made during the period from 06.01.2000 to 22.08.2008 showed that certain payments which were made after the due dates and the total amount of penalty and the amount of interest on such belated payment was assessed as Rs.25,87,774/-. No satisfactory reasons could be assigned by the respondent for travelling beyond the notice period. Therefore, the impugned order suffers for want of Notice in respect of a part of the assessment period under consideration.

9. On earlier occasion order dated 14.01.2003 and order dated 20.04.2007 under Section 14-B of the EPF Act were passed against the appellant establishment for levy of damages. The reply submitted by the respondent falls far short in explaining the circumstances as to why the present proceeding was started in respect of the same period i.e. for the month of 08/1999 to 12/1999, 06/2000, 07/2000, 12/2000, and 01/2001 which have been a subject matter of order dated 14.01.2003 and for the period from 08/1999 to 03/2005 which was covered by order dated 20.04.2007.

10. In Notice dated 12.03.2014 the rate of damages applicable on the due amount up to 25.09.2008 has been stated as 17% to 37%. In Notification dated 26.09.2008 in G.S.R. No. 689(E) it is laid down as follows :

“ In exercise of the powers conferred by Section 5 read with sub-section (1) of Section 7 and Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1 952), the Central Government hereby makes the

following Scheme further to amend the Employees' Provident Funds Scheme, 1952, namely :-

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.” ”

The rates of damages (percentage of arrear per annum) were amended to 5% to 25% instead of 17% to 37%.

11. 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 which was in excess of Paragraph 32A. The same principle applies to the present case where the respondent has acted in excess of its authority in demanding penalty in excess of the prevailing rate which should have been between 5% to 25% and not 17% to 37%.

12. 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 upto 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 in the present case was initiated on the basis of summons dated 12.03.2014. At the relevant time the prevailing rate as amended by Notification date 26.09.2008 was between 5% to 25% but the respondent in their notice specified the rate for assessment of damages from 17% to 37%, which is not tenable under the law. The Provident Fund commissioner ought to have followed the prevailing rates mentioned in the Sliding Table for assessment of damages and leave aside the overlapping period for which the damages have already been assessed and ought to have been recovered, since the assessment cannot be considered for the same period twice.

13. In view of the settled positions of law laid down in the case of (i) **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner (Supra.)** and (ii) **Andrew Yule and Company Limited vs Regional Provident Fund Commissioner and others (Supra.)**, I hold that the impugned order bad in law and the same is not tenable. Under such facts and circumstances and in the light of my above discussion, the impugned order is set aside and the appeal is allowed on contest. The case requires to be remanded to the Provident Fund authority for passing a fresh order after hearing the appellant establishment.

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Hence,

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that the appeal under Section 7-I of the EPF Act is allowed on contest. The impugned order dated 17.09.2015 is set aside. The case is remanded back to the respondent with a direction to hear the case afresh in the light of the observation made herein above and pass a fresh order after giving opportunity to the appellant to present their case and decide the same preferably within a period of three (3) months from the date of communication of the order. The appellant herein is directed to effectively participate in the proceeding before the Employees' Provident Fund Authority on all dates fixed. 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.