CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 179/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s National Judicial Academy,
Bhadbhada Road, P.O. Suraj Nagar,
Bhopal (M.P.) 462044

Appellant

Vs.

Regional Provident Fund Commissioner,
EPF Sub-Regional Office,
59- Arera Hills,
Bhopal (M.P.) 462011

Respondent

None appeared : Learned Counsel for Appellant.

Shri Harshit Patel : Learned Counsel for Respondent.

JUDGMENT

(Passed on 05th day of February, 2026)

The present appeal is directed against the order dated 08.12.2015, passed by Respondent Authority under section ***7-Q & 14-B*** of ***The Employees Provident Fund & Miscellaneous Provisions Act, 1952*** ,hereinafter referred to as the ***'Act'***, by which the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted the deposit of EPFO dues of its employees within the period from June, 2005 to March, 2009 and has assessed the amount of interest under section 7-Q of the Act at Rs. 3,29,449/- as well damages u/s 14-B of the Act at Rs. 9,16,899/- respectively, has directed to pay this amount as penal damages as well the interest.

Shorn of unnecessary details, the skeletal facts, connected to present appeal, are mainly that according to Appellant Establishment, they are an Autonomous Institution under the Department of Justice, governed by the directions from its Governing Council and the General Body, the Chief Justice of India as its Chairperson and presides the governing body, the Governing

Council consists of two senior most Judges of the Supreme Court of India and three Secretaries from the Government of India, the Secretary General of the Hon'ble Supreme Court as its Member Secretary. It has launched a plan for research, education and training provide to Judges for their better performance, it employees various kinds of academic and administrative staff on contractual basis and as outsourcing employees for Security, Gardening, Catering, Housekeeping, Laundering, Transport, etc., through different outsourcing agencies. It ousted to cover itself under the Act; a resolution in this respect was passed by the Governing Council on 15.05.2008. The Director of the Appellant Establishment also approved implementation of the Scheme to the contract employees vide his order dated 29.10.2008, before this date they were under mistaken and *bonafide* assumption that they need not contribute towards employer's share as EPF contribution. The Establishment thereafter filed application dated 18.12.2008 before the EPF Organization for allotment of PF Code with a demand draft of Rs. 2,07,142/- in favour of Regional Provident Fund Commissioner towards EPF contribution relating to staff and employers share for the month of October and November, 2008. The Office of Regional Provident Fund Commissioner, allotted PF Code to the Appellant Establishment vide their order dated 26.12.2008 stating that the Act will be applicable on the Appellant Establishment since 30.06.2005.

The Appellant Establishment deposited Rs. 12,81,588/- with the EPF Organization as employers contribution for the period from June, 2005 to August, 2008. The Enforcement Officer of the Respondent Authority submitted his inspection report dated 10.12.2009 stating that the Appellant Establishment has made delayed deposit hence, are liable to pay interest of damages u/s 7-Q and 14-B of the Act. It is further the case of Appellant Establishment that they made a request to the Regional Provident Fund Commissioner to waive the recovery with respect to employees contribution for the period June, 2005 to September, 2008 vide their letter dated 20.03.2010 and further undertook to deposit the employer share for the period even after employees contribution is waived vide their letter dated 02.07.2010. The Regional Provident Fund Commissioner, Bhopal waived employees share of PF contribution for the period from June, 2005 to August, 2008 vide his letter dated 29.09.2011. The Respondent Authority further standing letter dated 12.03.2014 regarding interest u/s 7-Q of the Act with respect to delayed deposit of PF contribution employers share. According to the Appellant Establishment, they appeared and filed their representation dated 27.05.2014 before the Respondent Authority stating the reasons behind the belated payment but the Respondent Authority passed an impugned order, recording the impugned finding and assessment by which the Appellant Establishment was held to have defaulted deposit of PF dues employer share

for the period as mentioned above and had assessed interest u/s 7-Q of the Act for the said period at Rs. 3,29,449/- and damages Rs. 9,16,899/- u/s 14-B of the Act, holding the Appellant Establishment liable to pay these amounts.

The Respondent Authority attached the amount of Rs. 12,46,348/- which was in the bank account of Appellant Establishment in recovering of the amount assessed, hence this Appeal.

Grounds of Appeal, taken by the Appellant Establishment in the memo of Appeal are mainly that the impugned finding and assessment is bad in law and fact, recorded by the Respondent Authority ignoring the fact that delay in deposit of PF dues for the year 2005 to 2008 was caused, required permission was to be taken by the Governing Council of the establishment. The said resolution was itself passed on 25.05.2008 and decision for implementation the EPF Scheme for contract staff was taken on 29.10.2008 and it is thereafter, the Appellant Establishment applied for PF code which was allotted by the Respondent Authority vide their order dated 26.12.2008 and amount was deposited on 11.06.2009 i.e., with a delay of only six months.

Further, Respondent Authority failed to consider the facts that there was shortage of staff in the establishment of appellant, time was consumed in calculating amounts, there were frequent changes in the staff, and payments of salaries were also delayed due to administrative reasons. Hence, there was no required *men rea* behind the delay. Also, that the Respondent Authority ignoring the principles of law laid down by ***Hon'ble Supreme* Court in the case of *Organo Chemicals Industries & Anr. v/s Union of India (55 FJR 283)*** and thus committed error in law in recording finding that the Appellant Establishment was liable to pay damages due to late deposit by way of ignoring the reasonable explanation that the damages and interest were levied without application of mind by applying the straight jacket formula. That the Respondent Authority did not consider the required *mens rea* with respect to the delayed deposit as mentioned in the judgment passed by the ***Division Bench of Hon'ble Supreme Court, in Employees State Insurance Corporation v/s HMT Limited and Anr., AIR 2008 SC 321, para 23***.

In their counter to Appeal, the Respondent Authority has taken a case that the Appeal under section 7-Q of the Act is not maintainable, the Appellant Establishment is covered under the Act and has been allotted the PF Code, they failed to deposit the statutory dues with respect to provident fund for the period February, 2009 to January, 2011 (letter revised to June, 2005 to March, 2009) in light of objections of the Appellant Establishment, proceedings under section 7-Q and 14-B of the Act for levy of interest and damages were initiated against them, notices were issued to them, they

appeared, and after enquiry the impugned findings as well assessments were passed. That *u/s 3(1) of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952*, the Appellant Establishment is covered under the Act and it was under obligation in law to get a PF Code and deposit the PF dues of its employees in which it failed, also that grounds of delay deposit were found not sufficient, the Respondent Authority has defended the impugned order stating that it have been recorded correctly in law and fact.

At the stage of argument, the Learned Counsel for Appellant Establishment did not appear. I have heard argument of Mr. Harshit Patel, Learned Counsel for Respondent Authority. I have gone through the record as well.

Only this fact, that none appeared from the side of Appellant Establishment to press the Appeal is sufficient to dismiss it, but keeping in view the fact that this Appeal has been dismissed earlier due to non-presence of any one from the side of the Appellant Establishment and was later on restored on their application and even after restoration of the Appeal, none has appeared from their side, I think it proper to dispose of the Appeal on merits.

After perusal of the record in light of rival arguments following point comes up for determination.

Whether the impugned findings and assessments u/s 7-Q and 14-B of the Act have been recorded correctly in law?

The first submission from the side of Respondent Authority is that Appeal u/s 7-Q of the Act is not maintainable, there is a judgment of ***Hon'ble High Court of Delhi in the case of Gaurav Enterprise v/s Union of India & Ors., MANU/DE/1843/2021,*** in which Single Bench of Hon'ble High Court has held that if the enquiry is joint and has started on the basis of common show cause notice u/s 14-B and 7-Q of the Act, the Appeal against order u/s 7-Q of the Act will also be maintainable even though separate orders have been passed.

In the case in hand, as it appears from perusal of record, one common notice was issued to Appellant Establishment bearing No. MP/BPL/0021190/000/Enf 511/Damages/2771 on 20.03.2014 for both the interest and damages. Enquiry was conducted jointly but orders have been passed separately u/s 14-B and 7-Q of the Act. As regards, the legality of the findings and assessments, though there are two different orders of the paragraph of these orders are one and similar except the assessment paragraph.

Learned Counsel for Respondent Authority has referred to Judgment of ***Judgment of Hon'ble M.P. High Court, in Sumedha Vehicles Pvt. Ltd. v/s C.G.I.T., Jabalpur,*** where an order of this Tribunal though passed separately on the basis of composite notice and enquiry imposing interest u/s 7-Q of the Act was held not appealable, this was affirmed by Single Bench of Hon'ble High Court of M.P.

Learned Counsel for Respondent Authority has further relied on judgment passed in the case of ***Hon'ble Supreme*** **Court in,** ***Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner and Others (2013) 16 SCC 1,*** in this case, it has been laid down that there is no provision of Appeal with respect to order u/s 7-Q of the Act but the appellant may still raise objection with respect to method of computation of interest and Respondent Authority is under obligation to consider and decide it. In the case in hand, there is apparently no calculation mistake with respect to interest hence, the findings and assessments with respect to interest cannot be faulted in law and fact, they are correctly affirmed.

Since, this Tribunal is under superintendence of Hon'ble High Court M.P. hence, the law laid down by Hon'ble High Court of M.P. as mentioned above will be binding hence, Judgment of Hon'ble High Court of Delhi does not help the Appellant Establishment in the case in hand. **Accordingly, the Appeal u/s 7-Q of the Act, held not maintainable, the Appellant Establishment is at liberty to seek remedy before proper forum.**

Section 1(3) of the Act, 1952 is being reproduced as under:-

"3. Subject to the provisions contained in section 16, it applies;

a) to every establishments which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf;

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification."

Since, there is nothing on record to show that the contractual as well other employees of the Appellant Establishment were covered under the equally beneficial and effective EPF Scheme, the act has been rightly held to apply on the Appellant Establishment.

Under *Para 32-A and 38(1) of The Employees' Provident Funds Scheme, 1952* (in short '***The Scheme***'), employer is required to deposit the PF dues till

fifteenth day of the next month in which the wages become due hence, in the case in hand also, the Appellant Establishment was required to comply para 38-A of the Scheme in which they failed. The reasons mentioned are bureaucratic lapses, shortage of employees, delay in getting approvals, these reasons cannot be held to be sufficient by any scale.

Learned Counsel for Respondent Authority has referred to Judgment in the case of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, wherein it has been laid down by the Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability hence, presence or absence of required *mens rea* will not have any effect in the case in hand.

Reference of ***Full Bench judgment of Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

> ***"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-***
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> > ***"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :***
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> > ***(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF***

contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of seizable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy

damages in all cases, and is inclined to frame the following guidelines:-

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum.

Even otherwise also, section 14-B reads that the penal damages may be imposed which itself makes it clear that, it is not mandatory in every case, no doubt *mens reas* loses significance in case of breach of civil liability but when the provision itself is not mandatory the Authorities and this Tribunal will be justified in considering the aggravating and mitigating circumstances resulting into default deposit. Keeping this purpose in view, even testing the facts and circumstances of the case as well ground for delay mentioned in the memo of Appeal, in light of, the circumstances do not justify any interference by this Tribunal.

Accordingly, the impugned findings and assessment under section 14-B of the Act are held to have been recorded **correctly** in law and fact and are affirmed.

Point for determination stands answered accordingly.

No other point was pressed.

In light of above discussion and finding, the Appeal is held *sans* merit and is liable to be dismissed.

ORDER

Appeal Dismissed.

No order as to cost.

Date:- 05/02/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 05/02/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)