

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

EPF Appeal No.- 137/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

M/s P.G. Infrastructure Services Pvt. Ltd.

6 Malviya Nagar,

Bhopal (M.P.) 462003

Appellant

Vs.

Regional Provident Fund Commissioner,

Sub-Regional Office,

EPFO, 56 Arera Hills,

Bhopal (M.P.) 462011

Respondent

Shri Amit Mishra

:

Learned Counsel for Appellant.

Shri Harshit Patel

:

Learned Counsel for Respondents.

JUDGMENT

(Passed on 06th day of February, 2026)

The present appeal is directed against the order dated 23.04.2015, passed by Respondent Authority under section 14-B & 7-Q 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 February, 2009 to December, 2013 and has assessed the amount of penal damages u/s 14-B of the Act at Rs. 39,71,536/-, and interest under section 7-Q of the Act at Rs. 20,10,778/-, has directed to pay this amount as penal damages as well the interest.

The skeletal facts connected to present appeal are mainly that, the Appellant Establishment is covered under the Act and has been

allotted a separate PF Code. It is engaged in the business of Newspaper Publication units at various cities and published Hindi Newspaper, thus generate its income from Newspaper Publication, due to change in market conditions, newspaper circulation came down, it had to close its editions in various cities and suffered losses. The inquiry u/s 7-Q of the Act was conducted by the Respondent Authority for the period 10/10-12/12 it was held liable to deposit Rs. 65,69,833/- u/s 7A of the Act which had been deposited in time. Thereafter, the Respondent Authority issued a notice on 20.03.2014 requiring the Appellant Establishment to pay penal damages and interest mentioned in the notice, thereafter, a revised notice dated 09.07.2014 was issued by Respondent Authority for default relating to period February, 2009 to December, 2013, assessed the amount u/s 7Q as interest at Rs. 20,10,778/- and penal damages u/s 14B at Rs. 39,71,536/-. The Appellant Establishment appeared and filed a detail reply dated 22.05.2014, in which they took a defense of bad financial condition, the Respondent Authority passed an impugned order with impugned findings and assessments, hence this Appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the impugned findings and assessments are perverse and passed without application of mind by the Respondent Authority, the impugned findings and assessments are without reason passed by a non-speaking order. The Respondent Authority committed error in law in appreciating the bad financial condition of the Appellant Establishment which clearly showed that there was no required *mens rea* in default and delay of deposit of PF dues hence, committed error in law. The Respondent Authority imposed maximum damages without considering the mitigating circumstances and various judgments of Hon'ble High Court and Hon'ble Supreme Court in this respect are referred herein thus, committed error in law.

In its counter to appeal, the Respondent Authority has taken a case that the Act is a beneficial legislation, the provisions of the Act apply *sui generis*, any establishment having twenty or more persons in employment who is not covered under any PF Scheme is covered under the Act and is required to deposit PF dues which include contributions by the employees and employers by the fifteenth day of next month. Since, it is a beneficial legislation, any provisions capable of two interpretations,

the interpretation in favour of the beneficiaries will be accepted. Also, it has been stated that the order u/s 7Q with respect to interest is a consequential order when the main order u/s 7A of the Act is final, order u/s 7Q cannot be challenged and there is no provision of appeal against order u/s 7Q of the Act.

As regards, impugned findings and assessments with respect to penal damages u/s 14B of the Act, Respondent Authority has defended its findings and assessments with a case that it is correct in fact and law and their mitigating circumstances could not be established before it.

The Appellant Establishment has further filed a rejoinder wherein they have mainly reiterated their case.

I have heard argument of Mr. Amit Mishra, Learned Counsel for the Appellant Establishment and Mr. Harshit Patel, Learned Counsel for the Respondent Authority. Both the sides have filed their written submissions which are part of record. I have gone through the written submissions and record as well.

As it has been submitted from the side of Appellant Establishment, since, order u/s 7Q and 14B of the Act, though passed separately, have been passed on the basis of composite enquiry arising out of composite notice hence, appeal against order u/s 7Q of the Act will also be maintainable, section 7-Q reads as under:-

“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.”

On the other hand, Learned Counsel for Respondent Authority has submitted that there is no provision of Appeal in the Act with respect to order u/s 7Q. Moreover, since such an order is a consequential order with a main order is final, consequential order cannot be challenged.

Learned Counsel for Appellant Establishment has referred to Judgment of ***Hon'ble High Court of Delhi in the case of Gaurav Enterprise v/s Union of India & Ors., MANU/DE/1843/2021.***

He has referred to 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)***, since both the order u/s 14-B & 7-Q of the Act have been passed by way of composite order after a composite enquiry, the Appeal is held maintainable also with regards to order u/s 7Q of the Act.

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.

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.

As regards to part of the findings and assessments with respect to liability, section 14-B of the Act, this provision is being reproduced as under:-

"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 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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.”

Learned Counsel for Appellant Establishment has submitted that since the Appellant Establishment was under financial distress due to loss of business and delayed payments, they could not deposit the PF dues in time otherwise, they have been regular in deposit of PF dues. He has referred to certain assessments and claims with respect to deposit as mentioned in the memo of Appeal. He further submits that this shows that there was no required *mens rea* to evade the liability to deposit this fact, was not considered by the Respondent Authority hence, it committed error in law in recording the findings and assessments.

Learned Counsel for Respondent Authority has referred to Judgment in the case passed by ***Hon’ble Apex Court in, 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.

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:-

"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 :

(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 sizeable 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.

The section 14-B of the Act as reproduced above, itself provides that damages may be imposed which means that the damages are not mandatory rather they are discretionary, the Respondent Authority as well this Tribunal is under obligation in law to consider the aggravating and mitigating circumstances while assessing the damages.

Now, coming on the facts and circumstances of the case, in light of above noted settled proposition, it comes out that default is recurring for many years. The Appellant Establishment has taken a case that they were in a bad financial condition hence, they could not deposit the dues, and they have filed a balance sheet of the establishment for the year 2011-12 and 2012-13 in this respect before Respondent Authority.

As the impugned order speaks, the Respondent Authority has not recorded any findings in this respect. The Respondent Authority was

required to consider the documents and record specific findings, whether these documents substantiate the theory of financial loss as propounded by the Appellant Establishment before it and if this theory was found substantiated, its legal effect in computing damages as has been established earlier, the Respondent Authority is under obligation in law to consider the mitigating and aggravating circumstances while considering to impose penal damages u/s 14B of the Act, by not doing so the Respondent Authority had committed error in law. Hence, the matter requires to be remanded back to the Respondent Authority to decide the matter afresh in light of observations and findings recorded above. Since, the matter is an old one it may be taken on priority basis.

No other point was pressed.

In light of above discussion and finding, the reference is answered as follows;

ORDER

“Appeal against order u/s 7Q of the Act is held not maintainable. The Appellant Establishment is at liberty to pursue remedy before appropriate forum.

Setting aside order u/s 14B of the Act, the matter is remanded back to the Respondent Authority to decide it afresh in light of aforesaid observations, directions and after giving opportunity of hearing to the Appellant Establishment.”

No order as to cost.

Date:- 06/02/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 06/02/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)