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

EPF Appeal No.- 189/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s KCS Engineering Works,
Plot No. 9, Industrial Area
Govindpura, Bhopal (M.P.) 462023

Appellant

Vs.

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

Respondent

Shri Pranay Choubey : Learned Counsel for Appellant.

Shri Vivek Rana : Learned Counsel for Respondent.

JUDGMENT

(Passed on 05th day of February, 2026)

The present appeal is directed against the order dated 14.06.2016, 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 April, 1998 to January, 2014 and has assessed the amount of interest under section 7-Q of the Act at Rs. 2,92,237/- as well damages u/s 14-B of the Act at Rs. 7,40,922/- respectively, has directed to pay this amount as penal damages as well the interest.

Facts connected to present Appeal is mainly that Appellant Establishment is engaged in the business of manufacturing of engineering products and tools for various organizations. It is covered under the Act, 1952. The Respondent Authority issued a notice dated 29.01.2016 asking the

Appellant Establishment to deposit Rs. 7,40,922/- as penal damages u/s 14-B of the Act and Rs. 2,92,237/- as interest u/s 7-Q of the Act for delayed deposit of PF dues of its employees for the period 04,1988 to 01,2014. The Appellant Establishment appeared before the Respondent Authority in response to the show cause notice and took a case that the delay was not intentional and infact, it was due to various financial constrains arise out of delayed payments by the agencies and loss of business but the Respondent Authority passed the impugned order with impugned findings and assessments, hence this Appeal.

Grounds of Appeal, taken by the Appellant Establishment in the memo of Appeal are mainly that the Respondent Authority did not provide adequate and reasonable opportunity of hearing to the Appellant Establishment hence, impugned order is against the principles of natural justice thus, unjust and arbitrary. The Respondent Authority has acted as a judge and prosecutor in the proceedings. The Respondent Authority passed the impugned order without looking into the facts and circumstances for the delayed deposit assuming that delay itself is a ground for damages which is against law hence, erroneous in law. The Respondent Authority passed the impugned order and assessment without considering the aggravating and mitigating circumstances while considering the findings and assessments with respect to penal damages hence, committed error in law. The Respondent Authority imposed maximum damages without application of mind hence, committed error in law.

In their counter to Appeal, Respondent Authority has taken a case that the act is beneficial legislation under the Act, the Appellant Establishment was allotted a PF code and it was under obligation of law to regularly deposit PF dues of its employees within time framed as required under the Act and the Scheme in which it failed hence, the Respondent Authority was correct in law in recording the impugned findings and assessments. The Respondent Authority also correctly found the grounds for delay payments not sufficient. It has been further stated that the impugned findings and assessments of order has been passed after giving full opportunity to the Appellant Establishment, there is a default of more than 20 years which itself shows the required *mens rea* and also that Appeal u/s 7-Q of the Act is not maintainable.

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

At the stage of argument, I have heard argument of Learned Counsel for Appellant Establishment Mr. Pranay Choubey and Learned Counsel for Respondent Authority, Mr. Vivek Rana, Mr. Abhijeet Shrivastava has filed written submissions for Respondent Authority. I have gone through the written submissions and record as well.

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

Whether the finding of the Respondent Authority with respect to default in deposit of PF dues of its employees by the Appellant Establishment and assessment has been recorded correctly in law & fact?

The first submission, which has been taken from the side of Respondent Authority is that the Appeal u/s 7-Q of the Act is not maintainable because it is consequential to order u/s 7-A of the Act which determines the liability. Learned Counsel for Appellant Establishment has submitted that the impugned order is a composite order u/s 14-B & 7-Q of the Act hence, this Appeal is maintainable also with respect to order u/s 7-Q of the Act.

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 7-Q of the Act.

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.

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.

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.

As regards order u/s 14B, Learned Counsel for the Respondent Authority has submitted that no *mens rea* is required in breach of civil liability, hence, in case in hand also *mens rea* on the part of Appellant Establishment is not relevant, what is relevant is that the Appellant Establishment was under the civil liability to deposit PF dues of its employees within the time frame required in which they failed, hence they cannot escape from paying the penal damages as mentioned under section 14-B of the Act.

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:-***
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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 ?***
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> > ***(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.***
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> ***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:-***
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> ***(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, looking into the facts in the case in hand, in light of the aforesaid settled principles of law, it comes out that the reason for non-deposit of PF dues is bad financial condition and loss of business, which was taken by the Appellant Establishment but they could not substantiate this reason by cogent

evidence before the authority as well before this Tribunal. The default is also recurring for about more than 20 years, this itself shows the required *mens rea* hence, in light of above discussion and findings, holding that the Respondent Authority has correctly recorded its findings and assessments with respect to its order u/s 14-B of the Act, the findings and assessments are affirmed.

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* looses 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 ***Judgment of Hon'ble M.P. High Court, in Sumedha Vehicles Pvt. Ltd. v/s C.G.I.T., Jabalpur***, 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.

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)