

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

EPF Appeal No.- 226/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s Prasad Contractor Fabricators,
156, Sangam Garden, Awadhpuri,
Phase- II, Khajurikalan,
Bhopal (M.P.) 462021**

Appellant

V/s

**Assistant Provident Fund Commissioner,
EPF Sub-Regional Office,
59-Area Hills,
Bhopal (M.P.)
Pin- 462011**

Respondent

None for Appellant.

Shri Harshit Patel

:

Learned Counsel for Respondent.

JUDGMENT

(Passed on 05th day of February, 2026)

The present appeal is directed against the orders of Respondent Authority dated 28.12.2016, 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 EPF dues of its employees within the period from September, 2005 to March, 2013 and has assessed the amount of interest under section 7-Q of the Act at Rs. 96,419/- as well damages u/s 14-B of the Act at Rs. Rs. 1,72,032/- respectively, 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 an Organization covered under the Act bearing a PF Code No. MP/18162 and is engaged in contract work for main power supply on the basis of the contract awarded to them. A notice dated 20.03.2014, issued by Respondent Authority was received by them, they were required to attend proceedings and show cause as to why damages under section 14-B and interest under section 7-Q of the Act, not be recovered from them for the period of default in deposit of provident fund of their employees within the period of August, 2005 to March, 2013, the Establishment participated in the proceedings but ignoring their case and contention, Respondent Authority passed these orders with incorrect findings and assessments, hence this Appeal.

Grounds of Appeal as mentioned in the memo of Appeal, are mainly that the payments to the Appellant Establishment are made by the Authorities, these contracts executed and wages are paid to the employees as and when payments are received from the Authorities awarding contract and PF dues are deposited hence, the delay was not intentional, the Respondent Authority has committed error in fact and law in ignoring this fact. That the impugned findings and assessments have been recorded without application of mind, the Respondent Authority has failed to exercise its jurisdiction according to law, the findings are perverse, the impugned orders are non-speaking and is against the settled proposition of law in this respect.

In its counter to the Appeal, the Respondent Authority has taken a case that, the Act is a beneficial legislation hence, if any provision is capable of two interpretations, one which furtherance the interest of the beneficiaries shall be accepted. According to Respondent Authority, the Appellant Establishment is under responsibility to deposit PF dues of its employees within time, in which they failed hence, notices for interest and penal damages were issued to them. They did participate and after enquiry, finding that the justification for delay deposit was indicated, the penal damages and interest were imposed. Also, it is the case of the Respondent Authority that order under section 7-Q of the Act is a consequential liability and is not appealable under the Act.

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

At the time of argument, none appeared for Appellant Establishment hence, I have heard argument of Mr. Harshit Patel for Respondent Authority. I have gone through the record as well.

This Appeal could be dismissed only on the ground of non-presence from Appellant Establishment infact, it was earlier dismissed due to non-presence of Appellant Establishment and was restored on hearing of Application for Restoring the Appeal, filed by the Appellant Establishment, after the delay was restored, the Appellant Establishment again absented themselves for the second time hence, I proposed to decide the Appeal on merits.

The impugned judgment is in two parts, one part relates to interest under section 7-Q of the Act and other part is penal damages under section 14-B of the Act. The Act and Scheme framed under the Act do not provide for waiver of interest, 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.”

The Act provides no Appeal against order u/s 7-Q of the Act, this provision is a consequential provision, the main liability is when it is final, a consequential liability cannot be relooked into.

Learned Counsel for Respondent Authority has further submitted that simply because the order u/s 7-Q of the Act also has been passed on the basis of a composite notice and enquiry, it does not make this order appealable.

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.

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.

Appeal against this order under section 7-Q of the Act is held not maintainable, the Appellant Establishment is at liberty to pursue remedy before proper forum.

As regards, the order under section 14-B of the Act, against which this Appeal is being considered, following point arises for determination, after perusal of the record in light of rival arguments.

Whether finding of the Respondent Authority with respect to default in deposit of PF dues of its employees for the period September, 2005 to March, 2013 and the assessment has been recorded correctly in law and fact?

As it appears, from the admission of Appellant Establishment itself in the memo of Appeal, the fact that they did not deposit the PF dues to their employees for the said period in time. Hence, they have made themselves liable for penal damages under section 14-B of the Act.

Moreover, the judgment passed by ***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***, it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability to the point still remains for that *mens rea* may not have any role in holding the defaulter liable for its 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.

The ground taken by the Appellant Establishment, in memo of Appeal, is that the delay was caused, they are a firm who gets contract for execution of work for which it is paid by the Organization who award contracts, they received payments under the contracts not in time and when they received payments they deposited the PF dues. It comes out from perusal of record that their, this stand is not substantiated before the Respondent Authority nor before this Tribunal. Hence **firstly**, their, this defense is not established. **Secondly**, keeping in view the fact, the establishment is under obligation to

deposit the PF dues till the fifteenth day of next month, the long period of lapse as mentioned above, itself shows that this lapse was not without *mens rea*.

In light of above discussion, the finding and assessment of Respondent Authority in the impugned order u/s 14-B of the Act is held recorded correctly in law and fact.

Hence, in light of these facts, the impugned findings of Respondent Authority and assessment cannot be defaulted in law and fact.

No other point was pressed.

On the basis of above discussion and findings, the Appeal *sans merit* and is liable to be dismissed.

ORDER

Appeal Dismissed.

The impugned order under section 14-B of the Act is affirmed.

No order as to cost.

Date:- 05/02/2026

Judgment Signed, dated and pronounced.

Date:- 05/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**