

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

M/S. THE REVDANDA CO-OP. URBAN BANK LTD.,

DIST. RAIGAH - APPELLANT

V/s.

ASSISTANT PROVIDENT FUND COMMISSIONER

NAVI MUMBAI. - RESPONDENT

ORDER

Dated : 10TH FEBRUARY 2020

Present: Mr. H.L. Chheda A/R for the Appellant.

Shri V.K. Wasnik, Advocate for the Respondent.

1. The present appeal is filed by the appellant to challenge the order dated 12.10.17 passed by Assistant Provident Fund Commissioner, EPFO, Vashi levying the damages under section 14B of the EPF & MP Act, 1952 [hereinafter referred to as 'Act'] on account of the delayed remittances of EPF dues.

2. The respondent issued the summons jointly u/s. 7Q & 14B of the act simultaneously to the estt. directing the appellant to appear before him either in person or through authorised representative on 8.4.16. The enquiry was conducted and then the respondent Commissioner has passed the impugned order levying the penal damages and interest at which he proposes to levy the damages.

3. According to the appellant the appellant bank has voluntarily preferred application for application of EPF & MP Act and its provisions

since the bank was not statutorily coverable u/s. 1 (3) (b) of the act. The respondent organisation has allotted PF Code No. MH/118021 for rendering compliance w.e.f. 1.4.01 and the respondent considering the past accumulations remitted by the appellant as belated remittances has invoked the powers vested in him u/s. 14B & 7Q of the act simultaneously after the lapse of more than 8 years and thereafter the enquiry was conducted levying the penal damages which according to appellant is illegal.

4. It is thus case of the appellant that the appellant on its own has started deducting PF contributions from the salaries w.e.f. 1.4.01 and contributed equal quantum of amount as employees share i.e. equal to 12% in respect of each employee and deposited in separate a/c. with M/s. Raigad Dist. Central Co-operative Bank Ltd. till the decision was taken to make voluntarily application to EPFO Vashi for providing PF code no. for rendering compliance in respect of 25 employees employed under the act vide application dt. 27.3.08. That application was made along with D.D. of Rs.3382682/-. However, the respondent without considering the aspect that the applicant bank has paid the PF contributions immediately after the PF code No. was provided and monthly PF contributions deducted from the salaries of the employees together with employer's share were kept in separate bank a/c. and remitted to the fund, has passed the impugned order when infact no penal damages can be levied for pre-discovery period. So according to the appellant the impugned order is not legal.

5. It is also a case of the appellant that by virtue of section 16 (1) of the act of 1952, the act & scheme provisions were not applicable to the appellant bank. It is for this reason the appellant bank on its own has started deducting PF contributions from the salaries drawn by each of employee and by adding equal amount of contribution has deposited in another bank.

6. It is also a case of the appellant that for pre-discovery period no penal damages can be levied in accordance with circular dt. 17.6.04 and on this ground also the impugned order is not legal.

7. It is thus case of the appellant that the respondent Commissioner has been functioning in dwell capacity as prosecutor as well as quasi judicial authority since there was no representative or appearance from EPFO dept. which is against the principles of natural justice. As such the order is non-speaking, non-reasoned and without application of mind.

8. Learned Counsel appearing on behalf of the respondent opposed the appeal and stated that reasons assigned for delayed remittances are not sustainable and damages have been levied as per the rates prescribed under para 32 of EPF Scheme. It is stated that the employer is under statutory obligation to deduct the specified percentage of contribution from the employees salary and matching contribution, the entire amount is required to deposited in the fund within 15 days after the date of collection every month. Thereby the employer is under statutory obligation to deposit the amount to the credit of the fund every month. In the event default committed in that behalf, section 41 steps in and calls upon the employer to

pay the damages by way of penalty, maximum of which is the accumulated arrears. It is also submitted that the opportunity of personal hearing was given to the estt.

9. Learned Counsel for the respondent submitted that the appellant wrongly deposited the contributions with M/s. Raigad Dist. Central Co-operative Bank Ltd. without applying the exemption from EPFO. Since the estt. failed to pay the contributions and allied dues within due dates as required under the law for the period of default i.e. 4/01 to 7/12, the notice along with statement of delay in payments of calculations was sent and after examining all the facts on record the respondent gave detailed order for levying damages. As such there is no infirmity in the impugned order.

10. Heard counsels for the parties.

11. On going through the impugned order it appears that appellant estt. on its own has started deducting PF contributions from the salaries w.e.f. 1.4.01 and contributed equal quantum of amounts to the employees share i.e. equivalent to 12% in respect of each employee and deposited in separate a/c. with M/s. Raigad Dist. Central Co-operative Bank Ltd. and after allotment of PF code No. that amount was transferred to a/c. of PF dept., since the voluntary application was appended with D.D. of Rs.3382682/- dt. 26.3.08 drawn on IDBI bank Panvel in favour of RPFC Vashi. Obviously before the allotment of PF code No. appellant estt. was not supposed to transfer the PF amount to the a/c. of PF dept.

12. It is no doubt true that the employer is under statutory obligation to deduct the specified percentage of contribution from the employees salary

and the delay in allotment of code No. will not be a ground for non-remittance as other alternative mode of payments are available particularly the estt. could have remitted the PF contributions amount in separate a/c. Admittedly the appellant estt. used to deduct the contributions from the wages of the employees since 2001 and that amount was deposited by the appellant estt. in M/s. Raigad Dist. Central Co-operative Bank Ltd. So at the most it can be said that there is carelessness on behalf of the appellant estt. regarding adherence to the provisions of act since 2001. But when the respondent itself has not allotted the PF code No. to the estt., the respondent is not empowered to assess the damages from 2001 i.e. for the pre-discovery period.

13. In this respect, the Learned Counsel for the appellant submitted that in view of circular dt. 17.6.04 no damages shall be levied for the pre-discovery period where the code no. is allotted by the EPFO belatedly and estt. was prevented from making remittances in the absence of code no. allotted to it by EPFO. Therefore it is necessary to consider the effect of the circular dt. 17.6.04 and its withdrawal by another circular dt. 13.2.09. It is because as per circular dt. 13.2.09 the circular dt. 17.6.04 has been withdrawn prospectively. Relevant portion of the circular dt. 17.6.04 is as follows.

“The matter was discussed in detail by the CBT in its 165th procedure held on 3.12.2003. It has been decided that no damages shall be levied for the pre-discovery period where the code number was allotted belated by the EPFO and the establishment was

prevented from remitting the contributions in the absence of a code number allotted to a by the EPFO. In order to have uniformity of approach by different filed offices and with a view to alleviate the difficulties experienced by the establishments, the following guidelines are issued in the matter of levy of damages in respect of establishment covered belatedly:

1. Levy of damages or workers share for pre-discovery period.	No damages shall be levied if the workers share for pre-discovery period has been waived.
2. Establishment which paid dues within the time prescribed in the coverage notice.	No damages shall be levied, however, to compensate the interest loss to the EPFO only simple interest @ 12@ p.a. shall be levied.
3. Establishment which paid PF dues beyond the date fixed in the coverage notice.	No damages shall be levied till the date of payment fixed in the coverage notice. Only simple interest @ 12% upto the date mentioned in the coverage letter and damages at appropriate

	rates for the period of delay beyond the date fixed in the coverage letter be levied.
4. Establishments which were having their own private PF system before coverage and who deposited the PF in banks or finance establishments.	Only difference of interest amount between 12% simple interest p.a. and the actual interest earned by the private PF shall be levied if the latter is less than 12% p.a. Beyond the date fixed in the coverage notice. Damages shall be levied at the appropriate dates.

However, the past cases already decided may not be reopened. To avoid confusion and inconvenience in the matter of remittance of PF dues where the establishments are covered belatedly, the coverage notices shall henceforth contained instructions that payments of P.F. contributions and allied dues shall be made within 15 days from the date of receipt of the coverage notice.”

14. It appears that in the first circular of exemption it was specifically observed that the PF authorities had received representations from many

estts. against the levy of damages for the pre-discovery period that they were prevented from making remittance in the absence of code no. allotted to them and various H.Cs also had taken strong exception to this and more particularly after introduction of section 7Q of the act. Circular records that CBT had decided that no damages should be levied for the pre-discovery period when the code no. was allotted belatedly and when the estt. was prevented from remitting the contributions in the absence of code no. and thus to bring out the uniformity of approach by field offices and to alleviate the difficulties experienced by the estts. certain guidelines were issued in the levy of damages in respect of estts. covered belatedly.

15. Learned Counsel for the respondent submitted that circular dt. 17.6.04 has been withdrawn from 16.2.09 and the authorities are now empowered to impose damages u/s. 14 read with section 32A of the act. He seeks to rely on the decision in case of The Rajwade Mandal People's Co-operative Bank Ltd. Dhule V/s. RPFC & ors. WP No. 2341 of 1996 to submit that though the damages may not be in the nature of imposing any punishment the proceedings initiated for the recovery of dues entitles PF authorities to award damages since the legal obligation cast upon the employer in making timely deposit of PF accumulations, has been violated.

16. In that case petitioner bank started a sort of scheme for depositing employees contributions and the employers contributions in a separate bank a/c. opened with Dhule Dist. Cooperative Bank, Dhule in 1940. In 1989 respondent authorities informed the petitioner that it is covered by the EPF & MP Act, 1952, the coverage was made effective from 1988. In 1989

the amount of PF dues were deposited by the petitioner. In that case PF authorities have imposed only 10% of damages for pre-discovery period. Taking that aspect into account, only 10% damages have been imposed upon the petitioner though PF authorities could have imposed higher damages. It was considered that the competent authority has considered the written submission of the petitioner bank and has taken into consideration its bonafides and therefore concluded that levy of 100% damages would not be proper. In the facts it was considered that PF authorities have shown leniency whenever possible even for the periods of violation by the employer and has imposed the damages. In the facts the appellant bank was directed to deposit damages along with interest.

17. Facts in the present case are distinct & distinguishable. In the present case the appellant has levied 12% p.a. as interest u/s. 7Q of the act. In the present case the appellant even before allocation of code no. on 28.3.08 has presented the bankers cheque dt. 26.3.08 to PF authorities for entire amount of Rs.3382682/- for the entire period of pre-discovery from 4/01 to 2/08. The respondent while initiating action u/s. 14B has forgotten the circular instructions issued by EPFO dt. 17.6.04 which was withdrawn by the circular dt. 13.2.09 prospectively w.e.f. 16.2.09 and therefore the appellant is entitled to benefit of exemption of these circulars since subsequent circular withdrawing the earlier circular prospectively w.e.f. 16.2.09 cannot take away the benefit which was granted earlier. In the context the reliance is placed on the decision in case of Kanchrapara, Harnett English medium School represented by its Chairman V/s. RPFC & Ors. – WP No. 21454 / 2010.

18. Learned Counsel for the appellant therefore submits that the appellant could not deposit the amount as code no. was not allotted to it and therefore the demand made by the respondent was wholly unjustifiable. In the context the reliance is placed on the decision in case of Poona Shims Pvt. Ltd. V/s. B.P. Ramaiah, RPFC & Anr. – 2007 – LLR – 488 [Bombay H.C.], it has been observed in para 7 of the judgment that the PF authorities cannot seek to levy damages for defaults which have occurred for their own lapses. Had the code no. been allotted to the petitioner immediately after infancy period was complete, the petitioner would have deposited and remitted the PF contribution to the scheme. Not having done so the PF authority cannot levy damages for their own negligence.

19. Here in the instant case as stated earlier the appellant even before the allocation of PF code no. on 28.3.08 has presented the bankers cheque to PF authority for entire amount of Rs.3383682/- for the entire period of pre-discovery of 4/01 to 2/08. This act of appellant proves that the appellant acted in good faith towards act & scheme.

20. Considering all these facts that the appellant has demonstrated that there was no wilful default with regard to obligation and that he has presented the bankers cheque to PF authorities for the entire amount for the entire period of pre-discovery even before allocation of PF code no. and that the respondent Commissioner while initiating action u/s. 14B of the Act has forgotten the circular instructions dt. 17.6.04 which was withdrawn

by another circular dt. 13.2.09 prospectively, I find that the impugned order is liable to be set aside.

21. In view of the above discussions, the appeal of the appellant is allowed and the impugned order is set aside.

22. The copy of order be sent to both the parties. File be consigned to the Record Room after due compliance.

Date: 10.02.2020

(M.V. Deshpande)
Presiding Officer
CGIT -2, Mumbai