

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

**EPF Appeal No.- 63/2019**

**Present - P.K. Srivastava**

**H.J.S. (Retd.)**

**Capital Roadways & Finance Pvt. Ltd.  
Through its Director Shri Charanjeet Singh  
S/o. Bhagwan Singh Gulati, Dharam Kanta  
Chhola Road, Bhopal (M.P.)-462001**

**Appellant**

**Vs.**

**Employees Provident Fund Organization  
Through the Assistant Provident Fund  
Commissioner, Regional Office - 59, Arera Hills  
Bhopal (M.P.)**

**Respondent**

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<b>Shri Pranay Chaubey</b>	<b>:</b>	<b>Learned Counsel for Appellant.</b>
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<b>Shri J.K. Pillai</b>	<b>:</b>	<b>Learned Counsel for Respondent.</b>
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**JUDGMENT**

1. Under challenge in the present appeal is order dated 12.09.2019 passed by the Respondent authority U/S. 14-B of the Employees Provident Fund & Misc. Provisions Act 1952 (in short the Act) by which the Respondent Authority has held the Appellant Establishment defaulting deposit of EPF dues of its employees for the period 10/2013 to 01/2019 and has held the Appellant Establishment liable to pay Rs. 17,19,538/- U/S. 14-B of the Act.

2. The skeletal **facts** necessary for the determination of this appeal are mainly that the Appellant Establishment is covered under the Act and is under obligation to deposit the EPF dues of its employees. A notice dated 08.08.2019 was issued to the Appellant Establishment by the Respondent authority wherein the Appellant Establishment was required to show cause as to why penalty U/S. 14-B of the Act not be recovered from them for defaulting deposit of EPF dues for the period 10/2013 to 01/2019 mentioned in the notice.
3. The Appellant Establishment appeared before the Respondent Authority and admitting the delayed deposit, took a defense that they worked with the Nagar Nigam Bhopal as their contractors and the reason for delay was there Principal Employer Nagar Nigam Bhopal did not release their payment in time.
4. The Respondent Authority recorded a finding that deposit of EPF dues in time was statutory liability of the Appellant Establishment and the records produced by the Appellant Establishment before the Respondent Authority corroborating their ground related to 01/2011 to 01/2013 whereas the notice issued and inquiry related to the period between 10/2013 to 01/2019 and assessed the amount. Hence this appeal.
5. **According to the Respondent authority,** the Appellant Establishment is an Establishment covered under the Act and has been allotted a separate EPF code. It failed to remit the EPF dues within stipulated time provided under 38(1) of EPF Scheme 1952 accordingly notice was issued to them. They took a categorical ground that the dues were deposited belatedly due to late receipt of payments of bills raised by them before their Principal Employer the Nagar Nigam Bhopal but they could not substantiate with record, hence the Respondent Authority rightly held them having defaulted deposit of EPF dues of their employees and correctly assessed the amount U/S. 14-B of the Act.

6. **The grounds of Appeal**, taken by the Appellant establishment in their memo of appeal, are mainly **that** the Appellant establishment was not given reasonable opportunity to represent itself before the Respondent authority in response of the notice, hence the impugned findings or order is bad in law being unconstitutional, **that** the Respondent authority acted as Prosecutor and Judge which is against principles of natural justice, hence the impugned order is bad in law, **that** the impugned order has been passed without applying judicial mind by the Respondent authority is bad in law, the Respondent authority recorded the impugned finding and order without considering the fact that there was no mens rea on the part of appellant Establishment in late depositing the EPF dues, hence, erred in law.
7. I have heard **argument** of learned Counsel Mr. Pranay Chaubey for the Appellant Establishment and Mr. J.K. Pillai for the Respondent authority. Respondent side has filed written argument also. I have perused the written argument and have gone through the record.
8. On perusal of record in the light of rival argument following point arises for determination :-
- Whether, the finding of Respondent Authority that the Appellant Establishment is liable to pay damages for default in timely deposit of EPF dues of its employees for the period 10/2019 to 01/2019 and the assessment is correct in law and facts ?**
9. There is no dispute that the establishment is covered under the Act and has been allotted a separate PF Number. There is no dispute between the parties regarding the liability of the Appellant Establishment to deposit the EPF dues of its employees. The Appellant Establishment does not dispute at any stage that the EPF dues for the period aforesaid were deposited belatedly. Their only ground taken before the Respondent Authority was that they received payment against their bills raised by them before their Principal Employer. There is nothing on record to

substantiate their this ground before the Respondent Authority or this Tribunal.

10. In their memo of Appeal, the Appellant Establishment has taken another ground that they were running in losses within the period under assessment and hence could not deposit the dues in time. There is nothing on record to show that this ground was taken by the Appellant Establishment before the Respondent Authority. The Appellant Establishment has filed Income Tax Returns of assessment year 2017-18 with their balance sheet as on 31.03.2017 and 31.03.2018 as well their profit and loss account as on 31.03.2017 & 31.03.2018 to establish their this ground.
11. Section 17 of the Act provides that the appropriate Government may by way of notification in the Gazette and subject to such conditions as may be specified in the notification exempt an Establishment from operation of all or any provision of this Act. Hence, it was incumbent on the Appellant Establishment to seek waiver/exemption before Appropriate Government on this ground of financial loss which they did not do, hence cannot be exonerated of their liability to deposit the EPF dues of their employees within time specified.
12. Learned Counsel for Respondent has referred to the decision of Hon'ble the Apex Court in the case of **Horticulture Experiment Station Coorg Vs. R.P.F.O. C.A. No.(S)- 2136/2012** alongwith connected appeals wherein it has been laid down that **there is no role of *mens rea*** in civil liability. Hence, in this case also mens rea on the part of Appellant Establishment is not a factor to be considered while holding them liable for delayed deposit of EPF dues of their employees.
13. **On the basis of above discussion, the finding of Respondent Authority that the Appellant Establishment is liable to pay damages U/S. 14B of the Act for delayed deposit of EPF dues of its employees is held to have been recorded correctly in law and facts.**

14. As regards the assessment of amount in the impugned order, the statement regarding deposit of EPF dues which is not disputed shows that the default is of recurrent nature and of a considerable time, hence there is no mitigating circumstance which should have been consider by the Respondent Authority while assessing the amount.

**Hence, the assessment of the amount in the impugned order is also held to have been correctly recorded by the Respondent Authority.**

No other point was pressed.

In the light of above discussion and findings, the appeal fails.

**ORDER**

Appeal dismissed. No order as to cost.

**Date:- 09/07/2024**

**P.K. Srivastava  
(Presiding Officer)**

Judgment Signed, dated and pronounced.

**Date:- 09/07/2024**

**P.K. Srivastava  
(Presiding Officer)**