

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-245-2017

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/S Pentagon Lab Limited
16-C/16-D, New Industrial Area No.1
Dewas (M.P.)

APPELLANT

Versus

The Assistant Provident Fund Commissioner
7 Race Course Road, Indore,

RESPONDENT

Shri Uttam Maheshwari : **Learned Counsel for Appellant.**

Shri J.K.Pillai : **Learned Counsel for Respondent.**

(JUDGMENT)

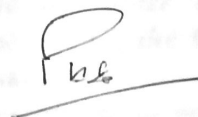
(Passed on this 16TH DAY OF 2022)

1. The present appeal is directed against the order dated 31-10-2017 passed by the Respondent Authority under Section 14B of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act", holding the appellant establishment defaulting in deposit of employees provident fund dues of its employees for the period from February-2006 to February-2012 and has assessed the amount at Rs.5,53,317/-.



2. Facts connected in brief are that the inquiry was made by the Respondent Authority under Section 14B of the Act for default by the Appellant Establishment in depositing the employees provident fund dues of its employees within the period February-2006 to February-2012 and order under Section 14B regarding imposition of damages was passed on 29-10-2014. The Appellant Establishment filed an appeal before the Tribunal which was registered as 1196(8)/2014 which was decided by my learned Predecessor vide his judgment dated 3-5-2016. The impugned order was set aside and the matter was remanded back to the Respondent Authority to calculate the damages for the period prior to 26-9-2008 in the light of law laid down in the case of **Roma Henny Security Pvt. Ltd. Vs. the Central Board of Trustees, EPF** (2013) 1 LLJ 29 Delhi and passed a fresh order after hearing. The Respondent Authority after hearing both the parties passed a fresh order dated 31-10-2013 which is subject matter of the present appeal.

3. The ground of appeal are mainly that the impugned order is bad in law as it has not been passed complying with the direction of Appellate Tribunal in its order dated 3-5-2016 by which the matter was remanded back to the Respondent Authority with certain direction. The Respondent Authority failed to consider that it was not possible to pay the amount of contribution without getting connected records from Government because the Company supplies medicines to the Government for which it did not receive payment from the Government in time, hence the delay was not voluntary rather it was due to compelling circumstances. The Respondent Authority failed to consider the judgment of the Appellate Authority in the judgment of **RPFC, West Bengal Vs. Delta Jute Industries Ltd.** (1997) 10 SCC 384 and also that the impugned order is illegal, improper and unjust based on incorrect appreciation of facts and evidences.



4. In its counter to the appeal, the main case of Respondent authority is that the Act is a social welfare legislation. Section 14-B does not speak of any difference between intentional and unintentional difference. The impugned order is a speaking order passed after affording opportunity to the appellant. Financial crunch will not be sufficient for waiver of penal damages for delay in depositing employees provident fund contribution. Accordingly it has been prayed that the appeal be dismissed.

5. I have heard arguments of Shri Uttam Maheshwari, learned counsel for the Appellant and Shri J.K.Pillai, learned counsel for the Respondent. And I have also gone through the record.

6. After perusal of record in the light of rival arguments, the following points comes up for determination:-

(1) Whether the finding of the Respondent Authority that the Appellant Establishment has defaulted payment of employees provident fund dues for the period 2/2006 to 2/2012 is correct in law and fact?

(2) Whether the impugned assessment of damages has been correctly done by the Respondent Authority?

7. **POINT FOR DETERMIANTION No.1:-**

Section 14-B of the Act requires to be reproduced here which is as follows:-

“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 authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by

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way of penalty such damage, not exceeding the amount of arrears, as may be specified in the Scheme.

8. The main argument from the side of the Appellant Establishment is that the delay was not intentional rather it was due to compelling circumstances regarding payment by government. Perusal of impugned order shows that there was no such material evidence produced before the Respondent Authority in support of the grounds regarding delay in payment of employees provident fund dues. The Appellant Establishment has not produced before this Tribunal also any such material, hence only oral submissions or affidavit that delay was due to some compelling circumstances will not be sufficient as a mitigating circumstances. The latest decision of Hon'ble the Apex Court in the case of HORTICULTURE EXPERIMENT STATION GONIKOPPAL, COORG VERSUS THE REGIONAL PROVIDENT FUND ORGANIZATION(2022) Live Law SC 202 Hon'ble the Apex Court has laid down that mensrea or actus reus is not an essential element in imposing penalty or damages for breach of civil obligation/liabilities and has laid down that mens rea is not a factor to be considered while holding the establishment liable for damages under Section 14B of the Act.

9. Hence, in the light of the above discussion, the finding of the Respondent Authority that the Appellant Establishment has defaulted in payment of employees provident fund dues is held correct in law and fact. **The Point for Determination No.1 is answered accordingly.**

10. POINT FOR DETERMIANTION NO.2:-

The perusal of record establishes that there was a previous assessment for the same period under Section 14B of the Act and the Appellant Establishment was saddled with the penal damages Rs.5,53,317/- vide order dated 29-10-2014. An EPF Appeal

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No.1196(8)/2014 was filed by Appellant Establishment . One of the grounds of the appeal was that the Full Bench of Hon'ble High Court of Delhi had upheld the law laid down by this Division Bench. In the case of Roma Henny Security Pvt. Ltd.(supra) it is upheld that the law laid down by this Division Bench in the System and Stamping Vs. EPF Appellate Tribunal(2008) 2 LLJ 939 wherein it was laid down that since Section 14B was added only on 26-9-2008 by way of amendment, hence assessment of damages for the period before 26-9-2008 should have been done on earlier table which included element of interest under Section 7Q of the Act. This direction was not complied with by the Respondent Authority in the impugned order dated 29-10-2014, hence setting aside the order, the Appellate Tribunal remanded the matter back to Respondent Authority calculating the damages for the period prior to 26-9-2008 in the light of principle of law laid down in Roma Henny Security Pvt. Ltd.(Supra).

11.. It is thereafter, the Respondent passed the order dated 31-10-2017 which is subject matter of present appeal. It shows that the amount assessed is the same as it was in the previous order of assessment dated 29-10-2014. The Respondent Authority has mentioned the direction of Appellate Tribunal in EPF Appeal No.1196(8)/2014. The perusal of impugned order shows that the representative of the Appellant Establishment failed to submit any document in support of their contention . Later on he submitted a representation containing some grounds of delay regarding late payment from Government which were not found corroborated by the Respondent Authority. Regarding the direction of the Appellate Court, as mentioned above, the Respondent Authority has mentioned that the Appellant Establishment has not submitted any representation/document in this respect and when appeal against the order in Roma Henny Security Pvt. Ltd(supra) case is pending before Hon'ble the Apex Court, this observation and attitude of Respondent Authority is wholly arbitrary and in contempt of order of Appellate Tribunal passed in EPF Appeal No.1196(8)/2014



mentioned above. This act is in subordination of order of Appellate Court and is misconduct of the part of the Respondent Authority which cannot be excused. The Respondent Authority could not refuse to comply with the direction on the ground that no submission was made by the Appellant Establishment on the point of direction issued by Appellate Tribunal or on the ground that the appeal is pending before Hon'ble Apex Court against the decision in Roma Henny Security Pvt. Ltd(supra) on the basis of which the Appellate Tribunal has issued directions in this order of remand. Hence, order of Respondent Authority regarding assessment of damages under Section 14B for the period February-2006 to 26-9-2008 is held bad in law and is set aside. The remaining portion of assessment is upheld.

12.. No other point has been pressed.

13. Before parting I feel it appropriate to send a copy of this judgment to Chief Provident Fund Commissioner for his perusal and placing a copy of this judgment in the service record of the Respondent Officer Ravi Anand, the then Assistant Provident Fund Commissioner, Indore(M.P.) who passed the order under present appeal.

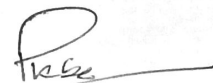
ORDER

Appeal is allowed partly.

The impugned assessment for the period 2/2006 to 26-9-2008 is set aside and remaining portion of the assessment under Section 14B is affirmed.

Registry to send a copy of this order to Chief Provident Fund Commissioner, for action.

Parties to bear their own cost.



(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.



(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:16/11/2022