

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

NO. CGIT/LC/EPFA-42-2019

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

M/S Kishan Rice Mill,Durg

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Pandri, Raipur(C.G.)

RESPONDENT

Shri Ketan Banwariya : **Learned Counsel for Appellant.**

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

(J U D G M E N T)

(Passed on this 24th day of January-2022)

1. Under challenge in this appeal is the order of Respondent Authority dated 11-4-2019 passed under Section 14-B of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”, whereby the Respondent Authority has held the Appellant Establishment guilty of late deposit of employees provident fund dues of its employees within the period 1-4-1996 to 26-9-2014 and has imposed penalty in the form of damages which is Rs.5,13,008/-.

2. Facts connected in brief are mainly that the Appellant Establishment is a Cooperative Society registered under the Cooperative Societies Registration Act. The Respondent Organization allotted separate provident fund code to the Appellant Establishment vide its letter

dated 27-9-2005 and directed the establishment to deposit the employees provident fund contribution of all its employees from 1-4-1997 to 30-9-2005. The Appellant Establishment deposited the contribution amount on 18-1-2006 thereafter, the Respondent Authority initiated proceedings under Section 7Q and 14-B of the Act for determination of interest and damages for this period. The Appellant Establishment was under no obligation to deposit the employees provident fund dues before the date, it was allotted separate Employees Provident Fund Code which is 27-9-2005. The Appellant Establishment raised this objection but the Respondent Authority brushed aside this contention and recorded the finding of late deposit of employees provident fund dues for 309 days in the impugned order and assessed the impugned amount in its order which is against law, hence this appeal.

3. . The grounds taken are mainly that the impugned order is bad in law and fact, is illegal and liable to be set aside. The Respondent Authority committed error in law in losing site of the fact that the employees provident fund code was allotted on 27-9-2005 itself with a specific direction to deposit employees provident fund contribution for the period 1-4-1997 to 30-9-2005 on or before 15-10-2005 and calculated interest as well as damages from 15-3-2005 in its notice dated 26-9-2014 as well as in the impugned order. Further the Respondent Authority also failed to consider the fact that since before 27-9-2005 no employees provident fund code was allotted to the establishment, hence the Appellant establishment is not answerable for any late deposit or non-deposit of employees provident fund dues, also that the Respondent Authority did not record any finding regarding mensrea in imposing the damages, hence again committed error in law.
4. In its counter/reply, the Respondent Authority has defended the impugned order with a case that the Act is a beneficial legislation and the Respondent Authority has to protect the beneficial interest of

employees so that they are not deprived of interest and other benefits on employees provident fund dues which they are otherwise entitled to as per law. The damages imposed under Section 14-B of the Act means and includes all punitive sum according to the circumstances, hence they are not compensatory but penal also in nature. It is also the case of the Respondent that the Appellant Establishment is under obligation to deposit the employees provident fund dues in time as and when it is covered under the Act, hence the Appellant Establishment cannot be said to be under obligation to deposit employees provident fund dues or interest thereon only from the date when they were allotted employees provident fund Code. According to the Respondent, the objection of Appellant Establishment were rightly brushed aside and the amount under Section 14-B has been rightly assessed, hence the impugned order does not warrant any interference.

5. I have heard arguments of learned counsel for the Appellant Shri Ketan Banwariya and Shri J.K.Pillai, learned counsel for the Respondent and I have also perused the record. Both the sides have mainly reiterated the points mentioned in their memo of Appeal and reply in their arguments.
6. After having perused the record in the light of rival arguments, the following points come up for determination in the case in hand:-

“1. Whether the finding of the Respondent Authority that the Appellant Establishment is under obligation to deposit the employees provident fund dues of its employees for the period before the date of allotment of separate employees provident fund code to the Appellant Establishment by the Respondent Authority.?”

“2. Whether the finding of the Respondent Authority that the Appellant Establishment has committed default in payment of dues within the period 2/2005 to 2/2012 as mentioned in Annexure-3 to the memo of Appeal (Notice and calculation sheet) is justified in law or fact?”

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

Section 1(3) of the Act, is being reproduced as follows:-

1[(3) Subject to the provisions contained in section 16, it applies-

(a) To every establishment which is a factory engaged in any industry specified in Schedule I and in which 6 [Twenty] or more persons are employed, and

(b) To any other establishment employing 1[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

8. This provision makes it clear that the liability arises and the Appellant Establishment is covered under the Act as and when there are 20 or more than 20 employees working the establishment. It is not disputed by the Appellant Establishment that before the date of allotment of separate Employees Provident Fund Code the number of employees working in the Appellant Establishment was less than 20, furthermore the Act or the Employees Provident Fund Scheme,1952 no where provides that any order or notification by any Authority is required to be covered by any establishment under the Act even if it otherwise fulfill the criteria for coverage. Hence these two facts make it clear that the Act applies on eligible establishment by its own as and when they fulfill the conditions under the Coverage mentioned in Section 1(3) of the Act. Hence the argument of learned counsel for Appellant that the appellant could only be held liable to pay employees provident fund deposits only from the date of allotment cannot be sustained.

9. It is also worth mentioning that any dispute that the appellant establishment was part of the parent organization Chhattisgarh Cooperative Marketing Federation and the employees provident fund dues of its employees were deposited in the EPF Code allotted to the Parent Organization i.e. Chhattisgarh Cooperative Marketing Federation. It is on 27-9-2005 that the Appellant Establishment M/s

Kissan Rice Mills was allotted separate employees provident fund Code and was required to deposit employees provident fund due of its employees on this separately allotted employees provident fund Code thereafter. The allotment order has been filed by the Appellant Establishment as Annexure-2 to the memo of Appeal which shows these facts. This order also shows that the employees provident fund due of employees between 1-4-1997 to 30-9-2005, also be deposited with interest if they are not deposited earlier.

10. In the light of above discussion of Respondent Authority that the Appellant Establishment is under obligation to deposit the employees provident fund due of its employees even before the date of allotment of separate EPF Code is held justified in law and fact and is affirmed. **Point for determination No.1 is answered accordingly.**

11. POINT FOR DETERMIANTION NO.2:-

As the impugned order and the impugned notice with the calculation sheet shows that before 02/2005, there was no late deposits. The employees provident fund due of 2/2005 which were to be deposited till or before 15-3-2005, were deposited on 18-1-2006 with a delay of 309 days. Similarly the employees provident fund dues of 3/2005 which were to be deposited till or before 15-4-2005 were deposited on 18-1-2006 i.e. with a delay of 278 days. The employees provident fund dues for June-2005 was required to be deposited on or before 15-7-2005 which were deposited on 18-1-2006 i.e. with a delay of 187 days and so. These are the three major dues which have been calculated earlier attracting major portion of penalty which is Rs.3,21,289 + 1,78,613 + 6415.

12. The Respondent Authority has not cared to record a specific finding that the Appellant Establishment had the requisite mensrea in not depositing the employees provident fund dues within the due date. IN the light of settled preposition of law on this point that in

absence of such a finding, the order will be bad in law. Being the First Appellate Court, this Tribunal is within its right to record its findings on facts also. There can be two options, first is to remand the case on this point with a direction to Respondent Authority to record a specific finding with regard to mensrea and then pass an order assessing the amount of damages. Thus the second option is when the material available on record be scrutinized and a finding on this fact be recorded to take a second option because exercising the first option will further delay the matter.

13. Needless to say that the mensrea is a state of mind. There cannot be any physical evidence to it. It can be inferred on the basis of the conduct of the parties. Keeping these broad principles in mind, it is to be seen whether the Appellant Establishment has the requisite mensrea in not depositing the employees provident fund dues in time.

14. Rule 38(1) of Employees Provident Fund Scheme 1952:

Mode of payment of contributions (1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage [of the pay (basic wages, www.epfindia.gov.in 48 dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund [electronic through internet banking of the State Bank of India or any other Nationalized Bank] [or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge: Provided that the Central Provident Fund Commissioner may for reasons to be recorded in writing, allow any employer or class of employer to deposit the contributions by any other mode other than internet banking. (2) The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly abstract in

such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month: Provided that an employer shall send a Nil return, if no such recoveries have been made from the employees : Provided further that in the case of any such employee who has become a member of the pension fund under the Employees' Pension Scheme, 1995, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme. (3) The employer shall send to the Commissioner within one month of the close of the period of currency, a consolidated annual Contribution Statement in Form 6- A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector. [Provided that the employer shall send to the Commissioner returns or details as required under sub-paragraph (2) and (3) above, in electronic format also, in such form and manner as may be specified by the Commissioner].

15. It is clear now that the employees provident fund due of a month is to be deposited till or before 15th day of the next month. Taking Annexure-3, the calculation sheet to the Appeal into consideration, it is clear that the employees provident fund dues have been deposited after lapse of many months. The maximum delay is with regard to deposit of employees provident fund due of 02/2005 which is of 309 days. It also establishes that the default is recurring as it has been repeated many times. There is nothing on record to show the mitigating circumstances in which this default was made. Rather the case of the Appellant Establishment is that it is not required to deposit employees provident fund dues before the date of allotment of separate employees provident fund Code which has been held not tenable in law in this judgment. Hence, in these circumstances, the delay in deposits made by the Appellant Establishment is nothing but intentional and on this basis it can be safely inferred that the Appellant Establishment had the requisite mensrea and avoiding liabilities by non-deposits in time. **Point No.2 for determination is decided accordingly.**

16. No other ground has been pressed.
17. On the basis of the above discussion the appeal lacks merits and is liable to be dismissed

ORDER

Appeal is dismissed. The impugned order dated 11-4-2019 passed by the Respondent Authority is affirmed.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:24-1-2022