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

NO. CGIT/LC/EPFA-49-2019

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

M/S Indore CNC Pvt. Ltd.

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Indore(M.P.)

RESPONDENT

Shri R.Manoharan along
with Shri A.K.Shashi

: Learned Counsel for Appellant.

Shri J.K.Pillai

: Learned Counsel for Respondent.

(J U D G M E N T)

(Passed on 23-12-21)

1. Under challenge in this appeal is the composite order dated 16-9-2019 passed by the Respondent Authority under Section 14B and 7Q of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act", by which the Respondent Authority has held the Appellant Establishment guilty of late deposits of employees provident fund dues between the period April-2012 to February-2017 and has held the Appellant Establishment liable to pay Rs.182580/- as interest under Section 7Q and Rs.331991 as penal damages under Section 14B of the Act.

2. Facts connected in brief are mainly that the Appellant Establishment is an Engineering Industry engaged in doing job of





works for Engineering Industries. It was covered under the Employees Provident Fund Scheme and allotted employees provident fund code number. It has been depositing employees provident fund dues regularly during the period 2011 to 2016. There was severe recession in industry and also labour unrest resulting in low productivity which forced the appellant establishment into financial crisis, hence the salary and employees provident fund dues of the employees could not be paid /deposited in time. There was only a delay in payment for the period April-2012 to February-2016, which was not intentional. There was no element of mensrea in delayed payment. The Respondent had issued a notice to the Appellant Establishment in this respect. The Appellant Establishment appeared and filed its response to the notice wherein it took the ground as stated above for late deposits but the Respondent Authority passed the impugned order without considering the grounds of late deposits, hence committed illegality, hence this appeal.

3. The grounds of Appeal are mainly that the impugned order is erroneous, illegal and contrary to the facts in the case in hand. During the period of 2011 to 2016, there was severe recession in the industry and also labour crisis resulting into low productivity. The Management could not pay the salary of its employees in time, hence there was a delay in depositing the employees provident fund dues in time which was not intentional but due to circumstances, the Respondent Authority passed the impugned order without considering these facts and without recording any finding on grounds taken by appellant establishment, hence committed illegality. The Respondent Authority held the appellant establishment liable to pay penal damages without recording finding of mensrea on the part of the appellant establishment which is against law.



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4. In its reply/counter to the Appeal, the Respondent has defended the impugned order on the ground that the Act is a social security legislation, passed in order to protect the interest of employees. It provides compulsory deduction of provident fund from employees by the employer and requires the employer to deposit the deduction after adding his contribution to the Respondent Authority in time mentioned under para-38 of the Employees provident Fund and Pension Scheme. Section 14B of the Act does not speak or differentiate between the intentional and unintentional default. Every default attracts levy of damages under Section 14B of the Act that is to say that where the establishment has not paid the dues in time, it is liable to pay damages. The damages have been levied at reasonable rates, in the case in hand. The interest has been levied in order to pass it on to the employees which is favorable to them. According, to the respondent the impugned order has been passed after considering the representations submitted by the appellant. A bare perusal of the impugned order will show, that the grounds taken in the representation have not only been taken on record but also have been considered by the Respondent Authority. Accordingly, it has been payed that the appeal be dismissed.

5. The Appellant establishment has filed its rejoinder to the counter, wherein it has mainly reiterated its case. The appellant establishment has further filed copy of order sheets regarding the proceedings before the Respondent Authority on 4-9-2019 and 25-7-2019. They have also filed copy of proceedings dated 9-1-2019 and 14-11-2018.

6. I have heard arguments of learned counsel for the Appellant Shri R.Manoharan, assisted by learned counsel Shri A.K.Shashi through video conferencing and Shri J.K.Pillai, learned counsel for the respondent and have gone through the record.



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7. I have perused the record in the light of rival arguments and the following points come up for determination, in the case in hand:-

(1): Whether the finding of the Respondent Authority that the Appellant Establishment defaulted in payment of employees provident fund dues to attract penal damages under Section 14B of the Act is justified in law and fact?

8. The learned counsel for the appellant establishment has submitted that the appellant had taken a case in response to the notice before the Respondent Authority that the default was not intentional rather it was due to severe recession in the industry and labour unrest resulting in low productivity. The Appellant Establishment had submitted documents also to support their stand but the Respondent Authority did not consider the material in support of their contention and passed the impugned finding as well as the order ignoring the case of the appellant establishment before it as stated above. The Respondent side has contended in its counter/reply as well as the arguments of learned counsel for the Respondent that all the material on record was considered in recording the impugned finding and impugned order. Vide order dated 4-10-2021, the Appellant Establishment was directed to file a copy of representation and documents in support which they filed before the Respondent Authority during the inquiry along with affidavit. The Appellant Establishment has filed a copy of their representation and documents which goes to show that it was filed by the Appellant Establishment before the Respondent Authority and these grounds were taken by the Appellant Establishment to show that the default in payment was not intentional. A perusal of the impugned order shows that firstly it is a composite order under Section 7Q and 14B of the Act, secondly this order nowhere shows that the grounds taken by the Appellant Establishment in its representation before the Respondent Authority were considered by the Respondent Authority in recording the impugned finding and passing the impugned order. The order only shows that after going



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through the facts as available on record and statement prepared by the compliance wing, the Respondent Authority has passed the impugned order. Hence the impugned order does not stand the scrutiny of law as it has been passed without considering the material on record, specifically the grounds taken by the Appellant Establishment and the evidence in support for late deposits of employees provident fund dues. Consequently the impugned finding is held unjustified in law. The matter requires to be remanded back to the Respondent Authority to consider the grounds taken in the representation filed by the Appellant Establishment before the Respondent Authority and then pass a reasoned order in this respect after giving opportunity of hearing. Accordingly the appeal requires to be disposed.

ORDER

Setting aside the impugned order dated 16-9-2019, so far as it relates to liability under Section 14-B , the matter is remanded back to the Respondent Authority with a direction to consider the matter afresh in the light of grounds raised by the appellant establishment in its representation, before the Respondent Authority and evidence in support and then pass a reasoned order after hearing both the parties preferably within 3 months from the date of receipt of this order.

Parties to bear their own cost.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:23-12-21

