

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

EPF Appeal No.- 06/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s M.P. Security Force,
S-4, II Floor, Thadaram Complex,
Zone-I, M.P. Nagar,
Bhopal (M.P.)**

Appellant

Vs.

**Assistant P.F. Commissioner,
Regional Office, 59 Arera Hills,
Bhopal (M.P.)- 462011**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

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

JUDGMENT

(Passed on this 25th day of July, 2025)

Feeling aggrieved by order dated 29.08.2017, passed by Respondent Authority under section 14-B of the **Employees Provident Fund & Miscellaneous Provisions Act, 1952** (in short the 'Act'), the Appellant Establishment has filed the present appeal. Vide the impugned order, the respondent authority has recorded finding that the Appellant Establishment has defaulted deposit of P.F. dues of its employees within the period from May, 2004 to December, 2013 and has assessed the amount at Rs. 1,25,60,350/- (*One Crore Twenty Five Lacs Sixty Thousand Three Hundred Fifty only*), also has directed the Appellant Establishment to deposit the amount within time as mentioned in the order.

The skeletal facts connected are mainly that, the Appellant Establishment is covered under the Act and has been allotted the P.F. Code No. MP/. 13615, they are engaged in business of outsourcing and supply of manpower to different private and government institutions. A show cause

notice was issued by the Respondent Authority under section 7-A of the Act with respect to inquiry for correct assessment of PF dues of the employees of Appellant Establishment or workers employed by or through the Establishment.

The order was passed by the Respondent Authority on 07.11.2012 holding that the total EPF dues on the Appellant Establishment for the period 2008-09 to 2010-11 and 2011-12 was Rs. 4,92,11,004/- out of which Rs. 3,10,92,988/- were deposited and the balance of Rs. 1,81,18,016/- was to be paid by the establishment. The Appellant Establishment was given facility to deposit the said amount in installment and was paid by the Appellant Establishment. The case of the Appellant Establishment is that in fact, there was delay in deposit of the amount because the Appellant Establishment had outsourced manpower to M.P. State Tourism Development Corporation and other Principal Employers, who did not clear their dues thus resulting into default in deposit of PF dues. Infact, the M.P. State Tourism Development Corporation paid dues of the Appellant Establishment Rs. 32,91,110/-. The M.P. State Tourism Development Corporation further informed that an amount of Rs. 61,13,278/- was paid to the Appellant Establishment. According to the Appellant Establishment, it is clear that the delay in deposit of PF dues due to late payment of bills with respect to wages of outsourcing manpower supplied by the Appellant Establishment to the M.P. State Tourism Development Corporation.

According to the Appellant Establishment the Respondent Authority issued notice under section 14-B of the Act on 15.04.2012 showing cause why penalty and damages for delayed deposit not be levied from the Appellant Establishment, they also issued a revised calculation sheet on 25.07.2016 for the period between May, 2004 to December, 2013 and after enquiry, unjustly and arbitrarily assessed a total amount of penalty Rs. 1,25,60,350/-, hence this appeal.

Grounds of Appeals taken are mainly that, the Respondent Authority passed the impugned order and findings in utter disregard of statutory provisions as well law, in this respect laid down by full bench of Hon'ble High Court and held by Hon'ble Supreme Court in the case of Roma Henny Security Service Pvt. Ltd. vs. Central Board of Trustees, the Respondent Authority failed to appreciate the fact that section 14-B which provides damages is only compensatory in nature and delay in deposit was not intentional rather for the reason that outsourcing agencies who had hired manpower from the Appellant Establishment, did not pay wages of manpower to Appellant Establishment in time.

That the impugned order and findings are totally perverse, arbitrary, unfounded recorded by Respondent Authority in utter disregard to principle of natural justice and without considering the fact that there was no *mens rea* on the part of Appellant Establishment in delay deposit.

The impugned finding and assessment have not been recorded on sound reason rather are cryptic.

In its counter to the Appeal, the Respondent Authority has defended impugned order with a case that the Act is beneficial legislation, hence any provision, which is capable of two interpretations, the interpretation, which is furthering interest of the beneficiaries will be taken. According to the Respondent Authority, the Appellant Establishment failed to deposit PF dues of its employees within period stipulated under section 38(1) of *The Employees' Provident Fund Scheme, 1952* (in short 'Scheme') for the period May, 2004 to December, 2013, hence, proceedings under section 14-B of the Act for levy of damages on delay deposit were initiated. The default is of recurrent and for years which itself shows real intention of the Appellant Establishment. Furthermore, the interest and amount of damages as well contribution are invested by the organization interest bearing schemes and interest thus earned is distributed among the beneficiaries. This is also the case of the Respondent Authority that as many as 28 opportunities were given to Appellant Establishment. They failed to submit any reply or communication thereafter the impugned order was passed in light of the evidence available. Thus, the finding and assessment has been recorded correctly in law and fact warranting no interference.

I have heard argument of Learned Counsel for Appellant Establishment Mr. Uttam Maheswari and Mr. J.K. Pillai for Respondent Authority. I have gone through the record as well.

On perusal of record in the light of rival arguments following points comes out for determination:

Whether the findings of the Respondent Authority with respect to default in deposit of PF dues of its Employees in time and the assessment under section 14-B has been recorded correctly in law and fact?

Main argument of the Learned Counsel for Appellant Establishment is that, there was no intentional default in deposit infact the delay in deposit was because the outsourcing agencies to whom the Appellant Establishment had supplied manpower did not pay the amount to the Appellant Establishment in time, learned counsel has referred to the fact that the Appellant Establishment had to get the bill cleared from M.P. State Tourism

Development Corporation which they had not cleared and they rather cleared the bill after the assessment. The Appellant Establishment had to request them to deposit it directly with the Respondent Authority and they did deposit the amount of total Rs. 32,91,110/- directly to the Respondent Authority vide letter No. 1267 dated 14.02.2013.

Learned Counsel has further submitted that, likewise other customers have also made detailed payments of bill of the Appellant Establishment with regard to manpower supplied which was the main reason for delay in deposit of PF dues and its employees. Thus, according to learned counsel for Appellant Establishment, the delay was not intentional. This is mitigating circumstance which was ignored by Respondent Authority. Hence, the impugned finding and assessment is bad in law.

Defending the impugned finding and assessment, learned counsel for Respondent Authority has submitted that the Act is beneficial legislation the PF amount are invested by the organization in different schemes earning interest, the organization pays pension as well interest on deposit from the corpus of interest it earns from its investment any delay in deposit resulting into loss of interest. Learned Counsel further submits that the delay in deposit is recurrent in as many as five years period. The Appellant Establishment is under obligation to depositing the PF dues in time, week financial condition of the Appellant Establishment or delayed payment of bills cannot be valid excuse for condonation of penalty. Also, he has submitted that the Appellant Establishment deposited the PF dues belatedly that too when recovery proceedings were initiated which itself shows the real intention of the Appellant Establishment, which was not bonafide he has referred to the impugned order in this respect. Learned counsel also submits that in case of civil liability, *mens rea* has no role to play.

For the sake of convenience Section 14B of the Act is being reproduced as follows:

14-B. 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 8 [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, 8% [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover*

[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

A bare perusal of the impugned order discloses that, after providing opportunities of personal hearing on various dates it is mentioned in the impugned order itself, the representation of the Appellant Establishment appeared on 23.01.2016 and admitted the revised damages statement as correct and also assured it to deposit it.

In the Case of Horticulture Experiment Station Coorg V.s. R.P.F.O. Civil Appeal No. 2136/2012 and other connected appeals reported in Indian Kanoon.org.doc 162685560. It has been laid down by Hon'ble Apex Court that, in cases of Civil Responsibility, mens rea loses its significance.

Now coming into the facts and circumstances of the case in hand, from the record atleast this fact is established that amount of Rs. 32,91,110/- which the Appellant Establishment was entitled to receive from M.P. State Tourism Development Corporation, was not paid in time by the corporation who had taken the services of manpower supplied by the Appellant Establishment. So this is established that atleast the delay in deposit of this amount, it was the M.P. State Tourism Development Corporation who was responsible being Principal Employer. It has to be kept in mind that, when an organization provides services of any kind to other organization, the other organization receiving services, is also under obligation in law to pay the bill raised in time only then the organization supplying the services will be able to discharge its legal obligations with respect to provident fund etc.

Reference of section 2(e) of the Act is also required to be taken here. The Principal Employer is also employer for the purpose of the Act. Hence, the Principal Employer i.e., M.P. State Tourism Development Corporation in the case in hand, cannot escape its liability to ensure deposit of PF dues of

manpower which has been supplied to it by the contractor and it can only be ensured when the Principal Employer made payments in time.

In the facts and circumstances of the case in hand, since the default in deposit is recurrent, it cannot be said that there was no *mens rea* in delay deposit but with regards to the amount of Rs. 32,91,110/- belatedly paid by M.P. State Tourism Development Corporation, it will not be in the interest of justice to hold the Appellant Establishment liable for penalty or damages under section 14-B of the Act. With respect to this amount, the Respondent Authority is always at liberty to recover penalty or damages with respect to delay deposit of Rs. 32,91,110/- from the Principal Employer M.P. State Tourism Development Corporation.

No other point was pressed.

In the light of above discussion and findings, the appeal succeeds partly.

ORDER

Appeal allowed is in part. The finding of the Respondent Authority with respect to default in deposit of PF deposit of its employees for the period of assessment under the impugned order to the amount and assessment is affirmed. As regards the liability of the Appellant Establishment to pay the amount of penalty assessed, it is limited to the extent of penalty relating to the amount which comes after deducting the amount of Rs. 32,91,110/-. The respondent authority is at liberty to recover penalty with respect to the late deposit of amount of Rs.32,91,110/-, from the Principal Employer after adopting due process.

No order as to cost.

Date:- 25/07/2025

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

Judgment Signed, dated and pronounced.

Date:- 25/07/2025

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