

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

**EPF Appeal No.- 12/2018**

**Present – P.K. Srivastava**

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

**M/s Hotel Amar Vilas  
Through its Proprietor  
183, Zone-I, M.P. Nagar, Bhopal (M.P.)**

**Appellant**

**Vs.**

**Employees Provident Fund Organization  
Through the Assistant Provident Fund  
Commissioner, Regional Office, 59- Arera  
Hills, Bhopal – 462011 (M.P.)**

**Respondent**

**Shri Pranay Choubey**

:

**Learned Counsel for Appellant.**

**Shri J.K. Pillai**

:

**Learned Counsel for Respondent.**

**JUDGMENT**

**The present appeal is directed against** the order of the Respondent Authority passed under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, hereinafter referred to by the word 'Act', by which the Respondent Authority has recorded a finding dated 31.05.2018 that the Appellant Establishment has defaulted in deposit of EPF dues of its Employees from April 2015 till May 2017 and has held the Appellant Establishment liable to pay damages/ penalty under Section 14B of the Act, assessed at Rs. 1,44,061/-.

**Facts connected in brief are mainly that,** the Appellant Establishment is a hotel and is covered under the Act. A notice was issued by the Respondent Authority with respect to delayed deposit of EPF dues of its employees. The Appellant Establishment appeared before the Respondent Authority and took a defense with respect to delay which was running loss during the relevant period. According to the Appellant Establishment, the Respondent Authority acted illegally and recorded impugned finding without considering the defense put by the Appellant Establishment before it.

**The grounds of appeal** are mainly that, the impugned finding and assessment has been recorded meagerly, without affording fair opportunity of hearing to the Appellant Establishment and without considering the defense taken. The Respondent Authority has proceeded on the premise where there is a default there has to be levy of damages which is incorrect in law in absence of mens rea on the part of the Appellant Establishment hence the impugned finding and assessment are incorrect in law and fact.

**In its reply, the Respondent Authority has taken** a case that the Appellant Establishment failed to pay the EPF dues of its employees within stipulated time as provided under **Rule 38(1) of the EPF scheme, 1952 (in short the "Scheme")** within the period 01.04.2015 to 31.05.2017, hence, are liable to pay interest as well penalty. The impugned finding and assessment are correct in law and the appeal is liable to be dismissed.

**I have heard argument of Mr. Pranay Choubey** Learned Counsel for Appellant Establishment and Mr. J.K. Pillai for the Respondent Authority. I have gone through the record and the written submissions filed by the parties which are part of the record.

**Learned Counsel for the Appellant Establishment** has submitted that, according to the Section 14B it's this power is discretionary, hence it is to be exercised judicially and not arbitrarily. He further submits that, the Appellant Establishment took an excuse of its bad financial condition for late deposit of EPF dues which was established but, the Respondent Authority wrongly ignored this fact which showed lack of required mens rea on the part of the Appellant Establishment. Hence, the impugned finding and assessment are incorrect in law and fact and required to be set-aside. He has referred to following judgment of Hon'ble High Court of Madras in this respect.

***Sun Pressings v.s. The Presiding Officer WP (MD) No.s 7339, 9688 of 2013 and other connected writs reported in Indian Kanoon.org/doc 9345-1947.***

*In the referred case, an order of Tribunal reduced the amount of damages imposed by Respondent Authority under Section 14B to 50% on the ground of absence of required mens rea and other attending circumstances was upheld .*

**On the other hand the Learned Counsel** for Respondent Authority has defended the impugned findings and assessment. referred to a judgment of Hon'ble the Apex Court 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 wherein it has been held in the above referred that in cases of civil liability *mens rea* loses its significance.

Before entering into any discussion **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.*

**The provisions itself states that damages 'may' be imposed.** The use of word 'may' makes this provision discretionary and not mandatory. Further, it also comes out from bare perusal of this provision that there is no fixed amount of penalty to be imposed rather it may be any amount not exceeding the total amount of arrears, hence, though the Civil liability to pay penalty in case of Hon'ble Apex Court in the case referred above, the Respondent Authority and this Tribunal are within its powers to look into the mitigating and aggravating circumstances when it comes to the assessment of the penalty. My this view finds support from the above referred judgment of Hon'ble High Court of Madras in the case of Sun Pressings (supra)

**A bare perusal of impugned order shows that ample** opportunities were afforded to the Appellant Establishment but none appeared on their behalf, hence assuming that the Appellant Establishment did not have any say on the notice under Section 14B, the impugned order was passed. Thus the plea of bad financial position taken from the side Appellant Establishment has been taken for the first time before this Tribunal. The Appellant Establishment has filed some photocopy documents inform of a letter said to be written by

the Authorized signatory of the Appellant Establishment on 26.04.2018 to the Respondent Authority stating that the date fixed in the enquiry by the Respondent Authority was 27.04.2018 and also that they could not deposit the EPF dues in time due to bad financial condition. There is also a photocopy of profit and loss account of the Appellant Establishment ending on 31.03.2017 and 31.03.2016 showing losses but it is to be kept in mind that, the period of default in the impugned order is 01.04.2017 to 31.03.2018 which is not the period of the alleged financial losses which the Appellant Establishment has stated to have faced. Furthermore, the impugned order states that, none appeared from the side of Appellant Establishment on 27.04.2018 and 14.05.2018 and 28.05.2018 to press their reply. Hence, in the light of above mentioned facts, I did not find any illegality or error in law or fact in the impugned finding and assessment made by the Respondent Authority. The findings are thus affirmed.

**Accordingly, the appeal is held sans merit and is liable to be dismissed.**

**ORDER**

**Appeal dismissed.**

**No order as to cost.**

**Date:- 10 /06/2025**

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

**Judgment Signed, dated and pronounced.**

**Date:- 10 /06/2025**

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