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

EPF Appeal No.- 220/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s Indira Exports Pvt. Ltd.
Rau Industrial Area, Near Sanjana,
Cold Storage, CAT Road,
Block No.F, Rau – 453331 (M.P.)

Appellant

Vs.

Asstt. Provident Fund Commissioner (C-1),
Pradhikaran Bhawan, 7th Floor,
Race Course Road,
Indore – 452003 (M.P.)

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

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

JUDGMENT

Feeling aggrieved by order dated 23.12.2016, passed by the Respondent Authority under Section 14B of the Act, the Appellant Establishment has filed the present appeal with the case that they are a company engaged in Export Services to various organizations and are covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act'). They received a show cause notice issued by the Respondent Authority on 30.10.2015 which was further received on 07.11.2016 alleging they have committed a default with respect to deposit of EPF dues of their employees for the period 01.2011 to 07.2015 and were required to show cause why penalty under Section 14B of the Act not be recovered from them.

It is further the case of Appellant Establishment that, they appeared and filed a response to the notice, taking a defense that since they received late payment from their various authorities and clients, they could not deposit EPF dues in time, also stated that they did not have any required mens rea to commit the default. The Respondent Authority rejected their stand and recorded a finding that the Appellant Establishment had committed default in deposit of EPF dues of its employees for the period above mentioned in the

noticed and assessed a penalty to the tune of Rs. 6,90,365/- requiring the Appellant Establishment to deposit it within time prescribed.

Course of appeal taken in the memo of appeal are mainly that, the impugned finding and assessment suffers with illegality and error in law as well fact. The impugned order has been passed without considering the reasons for delay deposit mentioned by the Appellant Establishment in their reply and also without considering the fact that there was no mens rea in the delay deposit, hence, is unjust, illegal as well perverse. The Appellant Establishment has requested that the impugned order to set-aside.

In their counter to the appeal, the Respondent Authority has defended the impugned order with the case that, the Act is a welfare legislation and the findings have been correctly recorded in law as well fact, they warrant no interference.

The Appellant Establishment has filed rejoinder also, which is on record.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for Appellant Establishment and Mr. J.K. Pillai for Respondent Authority. Parties have filed written arguments also which are part of record. I have gone through the written argument and the record as well.

On perusal of record in the light of rival arguments, following points arises for determination.

1. ***Whether the impugned findings and assessment recorded in the order under appeal has been correctly recorded by Respondent Authority?***

The main submission on behalf of the Appellant Establishment is that, since they received payment from their various clients who they had supplied services, they could not deposit the PF dues in time. In fact, they did not have any intention or mens rea to breach the law, hence committed error in law in passing the impugned order which is required to be set aside.

On the other hand it has been submitted from side of Respondent Authority that, the Appellant Establishment is under legal duty to comply the Act and the provisions under the scheme which require them to deposit the EPF dues of their employees within time as provided under the Act. They failed to do this, hence, attracted penalty under Section 14B, also it has been submitted that, the impugned order has been passed after an enquiry afforded an opportunity to Appellant Establishment for hearing. Hence, does not warrant any interference.

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.

Learned Counsel for Respondent Authority has referred to Judgment of Hon'ble Supreme Court in the case of ESIC V.s. HMT and Others AIR 2008 (3) SCC 35 in which it has been held that mens rea or *actus reus* to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and are quantum itself. In another case *RPFC V.s. Sibbu Metal Works Reported in AIR 1965 SC 1065,* referred to from the side of Respondent Authority it has been laid down that when an Act is intended to serve a beneficial purpose and two contractions of a provision is are possible, the one which serves the purpose will be followed.

Now coming to the facts in hand, the ground taken for the first time by the Appellant Establishment in appeal is that, they received late payments hence could not deposit PF dues in time. There is no evidence to substantiate this ground hence, their defense is not even established before this Tribunal also. The default is recurring hence cannot be said without required mens rea.

No other point was pressed.

In the light of these facts and findings, the impugned findings in the order under appeal are held to have been recorded correctly in fact and law and are affirmed.

Consequently, the appeal fails.

ORDER

Appeal dismissed.

No order as to cost.

Date:- 11/06/2025 **P.K. Srivastava**
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 11/06/2025

P.K. Srivastava
(Presiding Officer)