

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

EPF Appeal No.- 34/2017

Present - P.K. Srivastava

H.J.S. (Retd.)

M/s. Agio Paper and Industry Limited

Village : Dhenka, Post Darrighat,

Masturi, District Bilaspur (C.G.)

Through - Its Factory Manager

Appellant

Vs.

The Regional Provident Fund (II)

Block D, Scheme No.-32,

Indira Gandhi Commercial Complex,

Pandri, Raipur (C.G.)

Respondent

Shri M.K. Vyas

:

Learned Counsel for Appellant.

Shri J.K. Pillai

:

Learned Counsel for Respondent.

JUDGMENT

1. Under challenge in this appeal is composite order dated 17.06.2021 passed by the Respondent Authority under Section 7Q and 14B of the Employees Provident Fund and Misc. Provisions Act, 1952, hereinafter referred to the word 'Act', whereby the Respondent Authority has held the Appellant Establishment liable for payment of damages under section 14B, in the form of penalty for the period April-1999 to June-2008 and interest under Section 7Q of the Act for the said period amounting to Rs. 16,82,005/- as damages under Section 14B and Rs. 5,71,536/- as interest under

Section 7Q of the Act for defaulting deposit of employees provident fund dues of its employees within the stipulated period.

2. **Facts connected**, in brief, are that the Respondent Authority issued a notice on 06.01.2011 informing the Appellant Establishment that it is under coverage of provident fund contribution and PF Code no.-CG/6513 has been allotted to it. It was further mentioned in the notice that the Appellant Establishment failed to deposit the EPF dues of its employees for the period from March 1999 to May 2008. This was challenged by the Appellant Establishment before the Respondent Authority in the reply to the notice with a case that **firstly**, the delay was due to bad financial condition because the company suffered financial loss since 1997 till date, **secondly**, the management of the company changed in the year 2003 and the new management cleared statutory and non statutory dues of the company to the tune of Rs. 22 Crore. EPF dues prior to 2003 Rs. 2,71,11,750/- were paid by the new management and **thirdly**, the company was declared sick by Board of Financial Reconstruction (BIFR) vide order dated 11.05.2006, hence the delay was not intentional. The Appellant Establishment also raised objections on the calculation/assessment of the amount. The Respondent Authority passed the impugned order without considering the case of the Appellant Establishment, taken by it in its reply by wrongly holding the Appellant Establishment defaulting deposit of EPF dues and required the Appellant Establishment to deposit the amount. Hence this appeal.

3. **The grounds of the appeal** taken in the Memo of Appeal are mainly **that** the impugned order is bad in law and facts and as such is illegal, that it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law laid down by Hon'ble the Apex Court in various cases viz; **Organo Chemical Industries Vs. Union of**

India AIR 1979 SC 1803, that it has been passed by the Respondent Authority without assessing and determining the loss to the beneficiaries as laid down in the referred case and **that** the notice was issued after 10 years which shows the malafide on the part of Respondent Authority.

4. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the liability of the Appellant Establishment to pay the employees provident fund dues of its employees has been adjudicated in separate proceedings under Section 7A of the Act and is final between the parties. Payment of damages and interest are consequential to the main order, thus according to the Respondent Authority, there is no error of law and fact in the impugned order. It is further pleaded that bad financial condition or financial loss is not a ground in the Act or the Provident Fund Scheme 1952 (in short 'Scheme') exempting the liability to deposit EPF dues in time. According to the Respondent side, the impugned order and findings are based on evidence on record as well admission from the side of Appellant Establishment with respect to delay in deposit and also that the assessment of amount also cannot be faulted in law or fact because it is also based on record after considering the reply of the Appellant Establishment.
5. I have **heard arguments** of Mr. M.K. Vyas, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. Both the sides have filed written arguments. I have gone through the record and the written arguments as well.
6. Before proceeding, it is to be mentioned here that though no appeal lies before this Tribunal with respect to order passed U/S. 7Q of the Act but since the order under appeal is a composite order U/S. 7Q & 14B of the Act, hence, the appeal is held maintainable so far as it relates to order U/S. 7Q in the light of

judgment of Hon'ble the Apex Court in the case of *M/s. Organo Chemicals Industries Vs. Union of India, 1979 AIR SC 1803*.

7. After perusal of the record in the light of rival arguments, the following point arises for determination :-

"Whether the finding of the Respondent Authority that the Appellant Establishment is liable to pay damages under Section 14B and interest under Section 7Q of the Act for delayed payments of employees provident fund contributions of its employees between the period March 1999 to May 2008 and the assessment can be faulted in law or fact or not?"

8. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for respondent is that imposition of interest under Section 7Q of the Act is only consequential when the liability to pay employees provident fund dues by the Appellant Establishment for the period in question has been settled and has become final. the Appellant Establishment cannot escape from paying interest on damages under Section 7Q of the Act. This is also because the Respondent Authority has to pay interest to the contributions on their deposits. The arguments of learned Counsel for Appellant Establishment on this point is mainly that the Appellant Establishment is that the Respondent Authority did not consider the fact of continuous financial loss as well bad financial condition also it did not consider the fact that the management had taken over the old management and was clearing the dues as well the fact that the establishment was declared a sick unit by BIFR, hence this order under appeal has been passed without application of judicial mind. Learned Counsel has relied on judgment of Hon'ble the Apex Court in the case of *Regional Provident Fund Commissioner Vs. Delta Jute Industry & Others, (1997) 10 SCC 384* in this respect. Learned Counsel has further referred to case of *Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees EPF Organization through Assistant*

PF Commissioner Delhi, Reported in 2013-I-LLJ-29 (Del.) and has submitted that as held by Hon'ble High Court of Delhi, damages for default in deposit of EPF dues for the period 1999 to 2008 included the interest chargeable under Section 7Q of the Act also. As submitted by learned Counsel, the Respondent Authority has committed error in law in not considering this aspect while passing the impugned order.

9. On the other hand, learned Counsel for Respondent has submitted that the Act is beneficial legislation, hence it should be interpreted in that spirit. During the proceedings before Respondent Authority, the Appellant Establishment admitted delay in deposits. This delay was established from the statement of deposit also. When there is established delay in deposit of EPF dues, the Appellant Establishment is under legal obligation to pay interest and damages. There is no question of intention or *Mens Rea* involved in delayed deposit. He has referred to judgment of Hon'ble the Apex Court in the case of *Horticulture Experiment Station Vs. The Regional Provident Fund Organization, Civil Appeal No.- 2136 of 2012* with connected appeals in this respect, where it has been so held. He has further referred to another judgment of Hon'ble the Apex Court in *Civil Appeal No.- 6592/2014* in the case of *Central Board of Trustees Vs. Roma Henny Security Services* in which the above referred judgment of Hon'ble High Court of Delhi has been set aside and the matter has been remanded to the High Court to decide it afresh in the light of observations. He further submits that the assessment of amount is also recorded on facts and is correct.

10. **Section 14B and 7Q of the Act are being reproduced as follows:-**

7Q. Interest payable by the employer. – *The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that*

higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

14B. 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 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, 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**' (**emphasis supplied**) 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, subject to such terms and conditions as may be specified in the Scheme.

11. Perusal of these two sections makes it amply clear that liability to pay interest is absolute in case of delayed deposit, whereas liability to pay damages involves discretion on the part of the Assessing Authority atleast with respect to the amount of damages U/S. 14B because this Section opens with the word 'May' and not the word 'Shall'.
12. As held in the case of *Horticulture experiment (Supra)*, referred to from the side of Respondent, the civil liability to pay has nothing to do with *Mens Rea* and it is to be seen only with respect to criminal liability. In spite of this proposition. I am of considered view that though the civil liability is absolute and is independent of *Mens Rea*, still the Respondent Authority has to consider the attendant circumstances, mitigating and aggravating, while assessing the amount because of use of the word 'May' and not 'Shall' in Section 14B. As regards to argument of learned Counsel for Respondent Authority that the Circular fixing the rate

of damages U/S. 14B is binding, it cannot be accepted because the statute is an 'act' of Parliament whereas the Circular is part of executive order and the statute makes the fixation of amount discretionary by using the word 'May' in Section 14B. This circular may be a guide for Respondent Authority to be followed generally but not binding atleast on this Tribunal.

13. Now coming to the facts of the case in hand, the proceeding books photocopy filed with the counter to the appeal discloses that on 30.05.2011 the delay was admitted by representative of Appellant Establishment Shri Sanjay Mishra. The statement regarding deposit also establishes delay in deposits. This is also established that until & unless order of BIFR is produced before the Board and not before the Respondent Authority, the exemption cannot be granted. This is itself provided in Section 14B. In the case in hand there is nothing on record to show that any such order was placed even before Respondent Authority. More ever, Section 14B itself provides that the power to reduce or waive the damages with respect to a sick company lies with the central board and not with the Respondent Authority. Hence, the Respondent Authority cannot be held to have erred in law in not considering this point in passing the impugned order. No such order has been placed before this Tribunal also.

14. As mentioned above, bad financial condition or loss can also not be a ground for exemption from liability U/S. 7Q or 14B. U/S. 16(2) of the Act if the Central Government is of opinion that having regard to the financial position of any establishment it is necessary or expedient, it may grant such exemption. Since, there is no such exemption on record at any stage, non consideration of the fact of financial loss or bad financial condition or change of management, by Respondent Authority in passing the impugned order, cannot be faulted in law and is affirmed.

15. As regards the assessment, it is apparent from record that default is recurring from March 1999 to May 2008. The order itself shows that the case of the Appellant Establishment regarding deposit of EPF dues for some months as mentioned in their memo of appeal has been considered by the Respondent Authority and has been deducted. Hence, in absence of any other material, the assessment of amount also cannot be faulted in law or fact and is affirmed.
16. This is also to be mentioned here that liability to pay interest under Section 7Q is a consequential one. In the case in hand, when the liability to pay Employees Provident Fund dues for the period in question has become final between the parties, the Appellant Establishment is under obligation to pay interest for late deposits under Section 7Q of the Act, hence the finding of the Respondent Authority with regard to liability under Section 7Q of the Act and assessment cannot be faulted in law or fact and is affirmed accordingly.
17. No other point was pressed.
18. In the light of the above discussion, the appeal lacks merit and is liable to be dismissed.

ORDER

Affirming the liability and the assessment of amount under Section 7Q of the Act in the impugned order, the Appeal is dismissed.

No order as to costs.

Date:- 28/06/2024

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

Judgment Signed, dated and pronounced.

Date:- 28/06/2024

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