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

**NO. CGIT/LC/EPFA-17/2018**

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

**M/S RVR Techonologies Limited**

**APPELLANT**

**Versus**

**The Asst.provident Fund Commissioner**  
**Bhopal(M.P.)**

**RESPONDENT**

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**Shri Uttam Maheshwari** : **Learned Counsel for Appellant.**

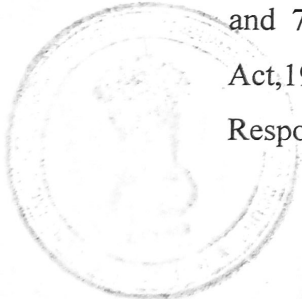
**Shri J.K.Pillai** : **Learned Counsel for Respondent.**

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**(J U D G M E N T)**

**(Passed on this 24<sup>th</sup> day of march-2022 )**

- I. Under challenge in the present appeal are two orders of Respondent Authority dated 23-8-2018 passed under Section 14-B and 7Q of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word "Act", whereby the Respondent Authority has held the Appellant Establishment guilty

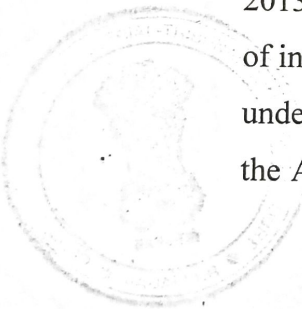


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separate period i.e. 2008 to 2016 have been stayed by Hon'ble High Court of M.P. in writ petition which is pending before Hon'ble High Court. The Respondent Authority, has further committed error in not appreciating the fact that there were mitigating circumstances for late deposits of employees provident fund dues., Also the Respondent Authority failed to appreciate that it does not has to act as a blood hound rather to act as a watch dog to the interest of the employees. The Respondent Authority has further erred in law in not appreciating the principle of law laid down by Hon'ble the Apex Court in the case of Organo Chemical Industries & Anr vs Union Of India & Ors, 1979 AIR 1803 and in Hindustan Times Limited Vs. Union of India (1998) 2 SCC 242, and other settled principle of law on this point. The Respondent Authority has further erred in not recording requisite *mens rea* in the late deposits and has imposed maximum damages.

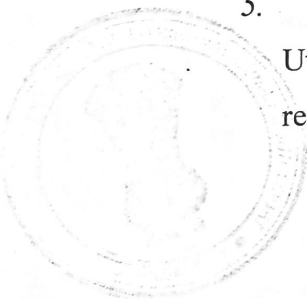
3. In its counter to the appeal, the Respondent has taken a case that the writ petition pending before Hon'ble High Court of M.P. is on different matter and for different period. Hence it does not cover the period for which the impugned orders have been passed. According to the Respondent in the light of judgment of Arcot Textile Mills Ltd. Vs. RPFC & Others, Civil Appeal No.9488 pf 2013 (arising out of SLP NO.(c )No.13410 of 2012), the imposition of interest for belated remittance is not appealable , hence the appeal under Section 7Q is not maintainable. Further it has been stated that the Appellant is under statutory obligation to deposit the employees



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provident fund dues of its employees within 15 days of close of the month, failing which he will be liable to pay for interest and also may be held accountable for damages. The damages to be levied are not only compensatory but punitive as mentioned in Section 14-B and in the case of the *Organo Chemicals Industries and Another Vs. Union of India and Others* and in *Hindustan Times Limited Vs. Union of India & Others* as held by Hon'ble the Apex Court. It has further been stated by Respondent that during the inquiry before the Respondent Authority in response to the notice, the Appellant Establishment was present through its Authorised Representative and requested to grant time to verify records. The case was adjourned for other date. After many adjournments, when no one appeared from the side of the appellant before the Respondent Authority, the inquiry was closed on 2-7-2018. According to the Respondent, the appellant establishment did not put its case despite in response to the notices before the Respondent Authority and impugned order was passed. Accordingly, the Respondent Authority has requested for dismissal of the appeal.

4. Appellant has filed its rejoinder, wherein it has mainly reiterated its case, as mentioned above.
5. I have heard argument of learned counsel for the appellant Shri Uttam Maheshwari and Shri J.K.Pillai, learned counsel for the respondent. I have gone through the records as well.



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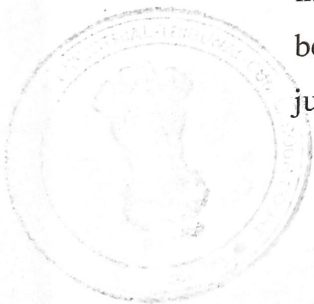
6. Perusal of the record in the light of rival pleading reveals following points for determination:-

1. Whether the appeal is maintainable against order Under Section 7Q of the Act?.

2. Whether the finding of the Respondent Authority that the Appellant Establishment has defaulted payment, and imposition of damages in the form of penalty is correct in law and fact?"

7. **POINT FOR DETERMIANTION NO.1:-**

The code does not provide appeal against order under Section 7Q of the Act. Learned Counsel has referred to Judgment of Hon'ble the Apex Court in Arcot Textile Mills Ltd.(supra) and has submitted that since one common notice was issued for interest and damages, the proceedings were composite, hence the orders cannot be held separate only because they were passed separately. According to learned Counsel submits that the order under Section 7Q and Section 14B should be taken as composite order in this case because the proceedings were composite before the Respondent Authority. No doubt the proceedings initiated on a composite notice, composite proceedings were also conducted for inquiry but separate orders were passed under one under Section 7Q regarding interest and the other regarding 14-B for damages, hence they cannot be said to be composite orders. I am supported by Single Bench judgment of Hon'ble High Court of M.P.Gwalior Bench in the case

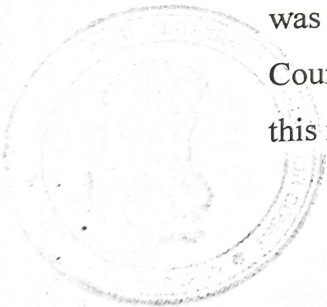


of M/s Sumedha Vehicle Pvt. Ltd. Vs. Central Government Industrial Tribunal & Others, Jabalpur in W.P.No.28789/2019.

Hence on the basis of the above discussions and findings the appeal against the order under Section 7Q of the Act is held not maintainable and point no.1 for determination is answered accordingly.

8. PONT FOR DETERMIANTION NO.2:-

The case of appellatant with respect to this point for determination is in two folds. Firstly an earlier order challenging damages and interest for a different period was under challenge in a writ petition and interim order regarding stay of recovery was passed and secondly the Respondent Authority did not appreciate the fact that financial condition of the appellatant establishment deteriorated due to losses incurred due to change of economic policy of Central Government. It is also submitted by learned counsel that before passing the impugned order for penal damages, the Respondent Authority did not record specific finding of required *mens rea* regarding willful default. It also did not record any finding with respect to loss to the beneficiaries. Nor did it make any determination of loss to the beneficiaries in terms of money which was required to be compensated by way of penal damages. Learned Counsel for the appellatant has referred to the following case laws, in this respect:-



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Hindustan Times Limited Vs. Union of India (1998) 2 SCC 242  
and Snap Tap Machine Accessories(India)(P) Limited Vs.  
Regional Provident Fund Commissioner,(1998) 11 LLJ 848.

9. Learned Counsel for the respondent has submitted that the 'Act' is a beneficial legislation. The department invests the amount at various places and distributes the claims of employees along with interest accrued on their deposits. The legislation had made provision for penal damages with a view to deter disobedience of liability of deposition of employees provident fund dues in time. One late deposit may be incidental and so many series of late deposits are nothing but intentional also. It has been submitted that *mens rea* is a state of mind which is reflected in the conduct of the parties. By making series of defaults, the appellant establishment has exhibited its *mens rea* which is evident from its conduct.
10. Before entering into any discussion, the latest judgment of Hon'ble the Apex Court on Section 14-B is the case of Horticulture Experiment Station Gonikoppal Coorg Vs. Regional Provident Fund Organisation, 2022 live law (SC 2020) wherein it has been laid down by two Judge Bench of Hon'ble the Apex Court that "any default or delay in payment of employees provident fund contribution by employer under the Act is *sine qua non* for imposition or levy of damages under Section 14-B and *mens rea* or

*actus reus* is not an essential element for imposition of penal damages for breach of civil obligation or liabilities. Hon'ble the Apex Court has relied on a Three Judge Bench Judgement of Hon'ble the Supreme Court in Union of India Vs. Dharmendra Textile Processors and Others (2008)(13) SCC 369 wherein interpreting an almost similar provision of Income Tax <sup>Act</sup> it was laid down that *mens rea* is not essential element for imposing penalty for breach of civil obligations or liability and mere contravention of the Act or default in making compliance of the mandate of law, as regards the civil liability are concerned. In the light of this judgment the argument of learned counsel for the appellant that the Respondent Authority did not record a finding regarding *mens rea*, and hence the order is bad in law, fails.

11. A bear reading of Section 14B of the Act discloses that the Authority has been given discretion firstly to recover damages or not and secondly regarding amount of damages. While considering these two points the Respondent Authority will certainly have to look into the attending circumstance regarding delayed payment. It will have to look into the facts whether the delay could be avoided by the appellant establishment or not and what amount of damages in the form of penalty would be appropriate in the case in hand. Now testing the facts of the case in hand on these two points, I find that there is nothing on record to justify or which can be taken as an excuse for delayed deposits.






12. In the Light of the above discussion, the aforesaid finding of Respondent Authority cannot be said to be bad in law or fact. Accordingly affirming the impugned finding, the point for determination No.2 is answered accordingly.

13. In the light of the above finding, the appeal is liable to be dismissed.


**ORDER**

**Appeal stands dismissed.**

**No order as to costs.**

  
(P.K.SRIVASTAVA)  
PRESIDING OFFICER

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

  
(P.K.SRIVASTAVA) 24.03.2022  
PRESIDING OFFICER

**Date:24-3-2022**

