

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No 1244(4) 2014

M/s. Mesco Airlines Ltd.

Appellant

VS.

APFC, Delhi (south)

Respondent

ORDER DATED:-9/02/2022

Present:- Shri Arun Kumar, Ld. Counsel for the Appellant.
Shri B.B.Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the order passed by the APFC Delhi, South on 23/09/2014 u/s 14B and 7Q of the EPF and MP Act 1952 (herein after referred to as the Act) levying damage of Rs.14,73,076/- and interest of Rs. 7,66,399/- on the appellant/establishment for the period April 1996 to March 2014.

The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of aviation and now known by the name of M/S Mesco Aerospace Ltd as per the fresh certificate of incorporation. Since the date of it's coverage , the establishment is diligent in deposit of PF dues of it's employees including compliance of different provisions of the Act. Notice dt21/03/2014 along with statement showing deposit of PF dues proposing levy of damage and interest was served on the appellant for the above said period. In the said show cause notice the appellant was directed to appear before the respondent on 8/4/2014. On the said day and thereafter the authorized representative of the appellant establishment appeared and raised dispute with regard to the method of calculation of the damage and interest and requested for some time to file a proper reply. On behalf of the establishment Adv Ms. Manisha Sharma had appeared and had requested for time which was granted. Unfortunately on the next date of hearing, the said counsel, on account of her illness could not appear before the commissioner and the proxy counsel had requested for some more time. The commissioner did not accede to the request and closed the hearing of the proceeding on 4/8/2014. During the pendency of the inquiry, the establishment made deposit of the proposed amount of interest. But the commissioner though took note of the said deposit and in the impugned order held that the amount deposited shall be adjusted towards the amount leviabale towards interest, passed the impugned order for damage ignoring the order of the Hon'ble High court of Delhi in the case of System and Stamping vs. EPF Appellate Tribunal and Others wherein it has

been held that the interest prescribed u/s 7Q being in-built under Para 32A in the quantum of damage, there can not be a separate calculation of damage and interest. Amongst other grounds it was also pointed out that in view of Departmental circular dated 29th May 1990, the levy of damage should be as per the rate prescribed under the circular and nothing more towards separate interest. The validity of the circular has also been upheld by the Hon'ble High Court. It has also been pleaded that the establishment is facing huge loss for the competition since 1996. The said mitigating circumstances leading to delay in deposit of the statutory dues was never considered and without giving proper opportunity to the appellant of proving it's bonafides for the default, abruptly closed the inquiry and passed the impugned order without application of mind and without giving any finding on the mensrea of the appellant behind the delay in deposit of the PF contribution. The Principle of Natural Justice were flouted and the inquiry was hurriedly concluded. While pointing out various legal aspects and the position of law settled by the Apex Court and different High Courts, the appellant has pleaded that the impugned order is liable to be set aside on various legal grounds as has been stated in the appeal memo.

The counsel appearing on behalf of the respondent has filed a written reply objecting the stand taken by the appellant. Citing various judgments of the Hon'ble High Courts and the Apex Court he submitted that the EPF Act and the EPF Scheme do not prescribe explicitly that the interest and damage are in built under Para 32 A of the EPF scheme. Thus the plea of the appellant is baseless and cannot be accepted. He also pleaded that the order u/s 7Q was passed considering the admission and deposit made by the establishment in this regard. He also submitted that several adjournments were allowed to the appellant during the inquiry. Despite the liberal adjournments, the appellant establishment could not produce the original challans showing deposit of the PF dues in time. Thus, the commissioner has passed a reasoned and speaking order. He also submitted that financial difficulty or loss in business is no ground for waiver of damage and interest which are penal in nature to deter the establishment from repeating the omission in future.

When the matter was taken up for final argument, none appeared on behalf of the appellant. The chronologically maintained orders sheet also shows that the appellant is not appearing in the matter since 3th July 2021, when the matter was taken up after the Tribunal started functioning regularly after the COVID 19 related closure. A petition filed by the respondent for early hearing of the appeal was taken up on proper service of the copy of the application on the appellant by post and disposed of by order dated 11.11.2021.

Perusal of the impugned order shows that the commissioner has not assigned any reason as to why damage at the maximum rate was imposed when the commissioner has the

discretion of reducing the same which is evident from the word “May” used in the section 14B of the Act. But at the same time it can not be lost sight that the appellant establishment during the inquiry had neither submitted any written submission indicating the mitigating circumstances nor filed any document to prove the same. Along with the appeal memo though the copies of the balance sheet has been filed to show the loss suffered by the company during the period under inquiry, those facts were never brought to the knowledge of the commissioner. On the contrary the establishment during the inquiry deposited the interest proposed which amounts to admission of the delay in remittance. The plea of financial difficulty or loss in business do not sound convincing since it is not the case of the appellant that it had closed down the business for such loss. It is also not the case of the appellant that it has down sized the staff strength for the loss in business or not paying salary to the employees. It is also not the stand taken by the appellant that employees share of the contribution was not deducted during the period under inquiry.

The learned counsel for the respondent citing various judgments of the Hon’ble High Court of Gujarat submitted that when the legislature has made no provision for limitation in conduct of a 14B inquiry, it would not be open to the court to introduce any such limitation on the grounds of fairness or justice. He placed reliance in the case of Hon’ble High court of Gujarat in **Gandhi Dham Spinning and manufacturing company limited vs. RPF and another (1987LabI.C 659GUJ)** to argue on the principles that causes prejudice on account of delay in initiation of a proceeding. In the said judgment it has been held that prejudice on account of delay could arise if it was proved that it was irretrievable. In the said judgment it has also been held that for the purpose of section 14B there is no period of limitation prescribed and that for any negligence on the part of the department in taking the proceeding the employees who are 3rd parties cannot suffer. The only question that would really survive is the one whether on the facts and circumstances of a given case the show cause notice issued after lapse of time can be said to be issued beyond reasonable time. The test whether lapse of time is reasonable or not will depend upon the further facts whether the employer in the mean time has changed his position to his detriment and his likely to be irretrievably prejudiced by the belated issuance of such a show cause notice. Not only that, in the case of *M/S Hindustan Times Ltd vs Union Of India & Others* the Hon’ble SC have held that the legislature has not prescribed a period of limitation for initiation of a proceeding u/s 14B. proceeding initiated after several years can not be a ground for drawing inference of waiver .

Considering the facts of the present appeal in the light of the principle decided in the above mentioned case, the stand of the appellant that the impugned inquiry was barred by

limitation seems not acceptable as there is absolutely no material to presume that belated issue of show cause notice has caused prejudice to the appellant.

Having considered the pleadings of the appellant and submission of the Respondent I find no merit in the contention of the appellant. The very fact that the appellant had made deduction from the salary of its employees towards PF contribution, but did not deposit the same proves the mensrea behind the delayed remittance making it liable to penal damage and interest. In the light of the admitted position that the establishment was paying salary to the employees but not depositing the PF contribution, though deducted from the salary makes it liable for damage and the commissioner has rightly passed the impugned order. Thus, from the totality of the circumstances and the pleas canvassed it is held that the commissioner has not committed any illegality while passing the order u/s 14B of the Act entailing interference. Hence, ordered.

ORDER

The appeal be and the same is dismissed on contest. The impugned order passed u/s 14B and 7Q of the EPF and MP Act is hereby confirmed. Consign the record as per Rules.

Presiding Officer