

**BEFORE THE HON'BLE 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.

M/s. Nakamichi Techno Pvt. Ltd.

Appellant

Vs.

APFC, Delhi West

Respondent

ATA No. D-1/21/2021

ORDER DATED:- 05.08.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri, Manish Dhir, Ld. Counsel for the Respondent.

This appeal challenges the composite order passed by the APFC, Delhi(west) on 11/4/2019, communicated to the appellant on 13/4/21 u/s 14 B and 7Q of the EPF and MP Act 1952(herein after referred to as The Act) levying damage of Rs. 1,16,026 /- u/s 14B and interest of Rs. 64,930/- u/s 7Q of The Act, on the appellant establishment for the period 4/96 to 9/2018. The plea of the appellant taken in this appeal is that, it is a private Ltd Company engaged in the business of importing PC Tablets and Mobile phones for sale in the local market. But for the cut throat competition in the market, slow market growth, it suffered huge financial loss during the period from 14-15 to 19-20. The policy of 'Make in India' lunched and promoted by the Govt. of India, added to the woes of the appellant and it's business virtually came to be closed. On 23/3/21 the recovery officer of the respondent made contact with the Director of the company for recovery of Rs 1,81,005/- in execution of the recovery certificate dated 31/8/20 issued in respect of the damage and interest assessed against the establishment by order dt11/4/19. Copy of the said order being demanded, the recovery officer advised to ask for the same by filing application under the RTI Act. Accordingly the appellant applied for the copy of the order and information with regard to the dates when the show cause notice and the impugned order was communicated. In response thereto on 13/4/21, the APFC, who had passed the order communicated the impugned order and in the covering letter gave liberty to the appellant to file objection if any with regard to the calculation of interest and damage.

Being aggrieved by the cryptic nonspeaking order passed exparte against the establishment, the appellant has prayed for

admission of the appeal and stay of the Composite order pending disposal of the appeal.

Notice being served, the Learned Counsel for the Respondent appeared and participated in the hearing held via video conferencing without filing any written objection. While supporting the impugned order he argued extensively on the legislative intension behind the benevolent legislation. He submitted that proper opportunity was given to the appellant for setting up of the defense against the proposed damage and interest. But the establishment did not avail the same. Again when the appellant establishment asked for information regarding the date of communication of the impugned order, the commissioner, for the sake of natural justice offered another opportunity to give objection if any, on the amount calculated. But the establishment instead of availing the opportunity granted, filed the appeal. He further submitted that this tribunal if feels proper can remand the matter for a fresh adjudication.

The appellant has prayed for admission of the appeal and stay of the order relating to assessment of the interest done by the commissioner in exercise of the power u/s 7Q too. Learned counsel for the respondent fairly conceded that the order impugned in the appeal is a composite order. The Hon'ble S C in the case of **Arcot Textile Mills Ltd vs. RPFC decided in civil appeal no 9488/2013** have clearly held that when one common order is passed for assessing the damage and interest, the same is a composite order and appeal challenging the interest assessed ,is maintainable in this Tribunal. Hence the present appeal filed by the appellant challenging the order passed u/s 14B and 7Q are admitted as the same has been filed within the period of limitation computed from the date of communication of the order.

On behalf of the appellant the impugned order has been challenged on two grounds. Firstly, no proper opportunity was given to the establishment to explain the mitigating circumstances resulting in delayed remittance. Secondly the commissioner has not given any finding on the mensrea of the appellant in causing the delay in remittance. The Learned Counsel for the appellant while relying on the judgments passed by the Hon'ble SC in the case of **McLeod Russel India Limited versus Regional Provident Fund Commissioner, Jalpaiguri and others reported in 2014SCC263** submitted that the impugned order is not sustainable in the eye of law. The appellant has a strong prima facie case to argue in the appeal. Unless the impugned order would be stayed pending disposal of the appeal, serious prejudice shall be caused. He further submitted that the APFC, in a haste, passed the order after conducting the inquiry for one day only and signed the draft order placed by the dealing assistant without application of mind.

Alongwith the appeal the appellant has filed several documents. One such document is the photocopy of the inquiry proceeding marked as Annexure-A-3. This starts on 10/10/18 when the calculation sheet was prepared and placed before the commissioner. After that date no adjournments were made for appearance of the establishment and show cause against the proposed damage and interest. The next date when the inquiry was held is 01/04/19, when the dealing assistant placed a draft order before the APFC, who, without application of mind and without giving any finding on the mensrea accepted the draft order prepared by the dealing assistant and passed the one page cryptic composite order imposing damage and interest.

This tribunal is miffed by the irresponsible and careless action of the APFC, a person vested with the power of discharging the quasi judicial function. He lacks the basic knowledge that in our adversary system of adjudication, proper opportunity is granted to the parties to a litigation to set up his stand. He is also ignorant of the Principle decided by the Hon'ble SC in different pronouncements and the guidelines set for the commissioner while conducting inquiry u/s 14B of the Act.

In the case of McLeod Russel India Limited versus Regional Provident Fund Commissioner, Jalpaiguri and others reported in in 2014SCC263, which was again discussed by the Hon"ble Supreme Court in the case of Assistant Provident Fund Commissioner versus Management of RSL Textiles India Pvt. Ltd, reported in 2017LLR337 ,it has been held that when there is no finding with regard to mensrea or actusreus, the order is not sustainable

Before parting, it is pertinent to mention that the appellant had approached the APFC with an application under the RTI Act for supply of the copy of the impugned order and supply of information as to when the order was dispatched to the establishment. It seems, at that point of time the APFC, perhaps realized his mistake in not communicating the order to the establishment and without compliance of the same the initiation of the recovery proceeding. He thus, while supplying the copy of the order offered the appellant establishment to file objection if any, within 30 days or to deposit the damage assessed. This action of the APFC who had become functuous officio in respect of the 14B inquiry appears illegal, wrong and without jurisdiction. This may be on account of the ignorance of the commissioner with regard to the procedure prescribed under the statute. He is ignorant of the position that unlike the order passed u/s 7A , no power has been given to the authority holding inquiry u/s 14B ,to reassess the damage for reasons to be recorded once the inquiry is concluded.

The learned counsel representing the Respondent submitted that the Tribunal, considering the legislative intention behind the statute, should remand the matter for reconsideration which would serve the ends of justice. But I am not inclined to remand the matter for re consideration as the same would force the appellant to a second round of litigation for the lack of diligence and ignorance of the APFC discharging a quasi judicial function. It is thus felt proper to dispose of the appeal at this stage of admission.

On considering the submissions made by the counsel for both the parties and on a careful perusal of the materials placed on record and on a mindful reading of the judgments cited by the appellant, it is concluded that the commissioner had passed the impugned order without giving any finding on the mensrea/actusreus which makes the impugned composite order passed u/s 14B and 7Q illegal. Not only that, the order passed by the commissioner and challenged in this appeal is a non speaking cryptic order, not supported by any logic guiding the commissioner to arrive at the conclusion for assessment of damage and interest which makes the impugned order liable to be set aside. Hence, ordered.

ORDER

The Appeal be and the same is allowed on contest and the impugned order passed u/s 14 B and 7Q of the Act levying damage and interest is hereby set aside. It is observed that the ignorance and obliviousness of the APFC concerned not only forced the establishment to a round of litigation, it also spoiled and wasted the valuable time of this Tribunal. Hence it is directed that a copy of this order shall be communicated to the CPFC, Chief Vigilance Officer of EPFO and the APFC concerned. The APFC is directed to be mindful and careful in future. The CPFC shall take appropriate steps for training and knowledge building of the commissioners discharging quasi judicial functions.

Presiding Officer