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

EPF Appeal No.- 09/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s M.P. Urja Vikas Nigam
Urja Bhawan, Main Road No.2,
Shivaji Nagar, Bhopal (MP)

Appellant

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
59 Arera Hills, Bhopal 462011

Respondent

Shri P.C. Chandak : Learned Counsel for Appellant.

Shri Jubin Prasad : Learned Counsel for Respondent.

JUDGMENT

(Passed on 06th day of May, 2026)

Feeling aggrieved by the order dated 12.09.2017, the Appellant Establishment has preferred the present appeal. Vide the impugned order, the Respondent Authority has recorded a finding that the Appellant Establishment committed default by way of delayed payment of PF dues of its employees for the period from September, 1986 till December, 2015 and has assessed the amount of penalty under section 14-B of ***The Employees Provident Fund & Miscellaneous Provisions Act, 1952***, hereinafter referred to as the ***'Act'***, at Rs. 21,01,490/-, has directed the Appellant Establishment to pay the amount.

The skeletal facts relevant to present appeal are mainly that, the Appellant Establishment is a Government undertaking established by State of Madhya Pradesh in the year 1982 which works as nodal agency for implementation of various programs of Government of India and State of

M.P. It engages casual labours and workers for its various projects, allotted to it by the Central Government and State Government. It is covered under the Act and deposits PF dues of its employees regularly. It had to disengage its employees which it had engaged with respect to some projects, for which funds were made available to it by the Central Government and some daily wagers which it had engaged to work in certain projects, after the projects were completed and there was no work as well post left to it in this respect, such project (Integrated Rural Energy Program 'IREP') employees and casual labours disengaged, filed the case before learned Labour Court and award of their reinstatement without back wages was passed, which was affirmed by the Industrial Tribunal in appeal. A writ petition bearing W.P. No. 6479/2008 and connected writs filed by it against order of Industrial Court were also dismissed vide order dated 20.01.2009, an SLP filed in this respect by the Appellant Establishment was also dismissed by the Hon'ble Supreme Court The award of the Labour Court directing reinstatement of the disengaged employees without back wages became final. Since, the Labour Court had directed reinstatement of the workmen disengaged by the Appellant Establishment without back wages, during the pendency of appeal and the writ petition by the Appellant Establishment before the Industrial Court as well Hon'ble High Court, the award was stayed subject to payment of last drawn wages to the workmen. Hence, the workmen were paid the last drawn wages during the pendency of the appeal against award of the Labour Court before the Industrial Court and writ petition before the Hon'ble High Court. Due to inadvertent mistake on the part of Appellant Establishment, these reinstated workers were granted difference in wages for the period under litigation which Appellant Establishment was not required to pay because the order of reinstatement without back wages. But, the Respondent Authority issued a notice u/s 7-Q of the Act and section 14-B of the Act to show cause as to why interest and penal damages not be recovered from the Appellant Establishment. The Appellant Establishment appeared and pointed out that in respect to the employees related to I.R.E.P. Scheme, they continued in employment under the Court's orders passed in their favour. The Respondent Authority passed order dated 13.06.2013 u/s 7-A of the Act, holding Appellant Establishment liable to pay EPF dues of its employees for the period 11/1990 to 03/ 2013 assessed @ Rs. 23,30,907/-.This order was complied with.

It is further the case of the Appellant Establishment that after receipt of difference in wages, the contractual and daily wage employees,

who had been reinstated under award of Labour Court filed the complaint before the Respondent Authority on 03.10.2013. The Respondent Authority after inquiry, passed order dated 12.03.2014 u/s 7-A of the Act as Annexure-A/8 to the memo of appeal, all these orders were complied with by the Appellant Establishment and the amount assessed were deposited. The Respondent Authority further issued a notice u/s 7-Q and 14-B of the Act, requiring Appellant Establishment to show cause why it not be required to pay interest and penal damages for the period relating to default by way of late deposit of PF dues, the Appellant Establishment appeared and submitted its written reply. The Respondent Authority extended the scope of inquiry in the proceedings from 09, 1986 till 12, 2015. The Respondent Authority illegally and arbitrarily held the Appellant Establishment liable for penal damages holding that it had willfully defaulted in depositing of dues by way of late deposits and assessed the amount u/s 14-B of the Act as mentioned above hence, this appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the impugned findings and assessments are bad in law and fact because the Respondent Authority failed to appreciate the fact that the Appellant Establishment is a Government Corporation who receives its funds from Government hence, should be exempted from penal damages. The Respondent Authority also committed error in law in not considering the fact that the disengaged employees who were ordered to be reinstated without back wages were paid wages which was last drawn salary under the order of Industrial Tribunal and Writ Court passed by them *u/s 65(3) of the Madhya Pradesh Industrial Relations Act, 1960* and *section 17 of the Industrial Disputes Act, 1947.* Hence, these wages were not earned by the employees rather were granted to them under order of Courts. Hence, Appellant Establishment was under no obligation in law to deposit PF of these wages. Consequently, he is not liable for penal damages if it paid wages under Court's order and difference of wages under a false impression after its SLP was dismissed by Hon'ble Supreme Court and award regarding reinstatement without back wages was affirmed.

The Respondent Authority further committed error in law in not considering the fact that simply because by paying wages which the appellant was not bound in law to pay,& it cannot be saddled with respect of penal damages because of lack of required *mens rea* in this respect. The Respondent Authority further committed error in law that there was a repeated calculation of interest and damages for the period January, 2000 to September, 2008 which is in violation of circular dated 29.05.1990 issued

by the organization itself which caps the imposition of damages @ 25%. The Respondent Authority further committed error in law in relying on judgment of Hon'ble High Court of Allahabad but discarding the judgment of Hon'ble High Court of Delhi in the same order on the ground that it is not binding on them because the Respondent Authority is not within the jurisdiction of Hon'ble High Court of Delhi thus, contradicted its own findings. The Respondent Authority thus passed an impugned order and assessment without considering the mitigating factors and without considering the fact that the Appellant Establishment in case in hand did not have required *mens rea* for delayed deposit of PF dues.

In its counter to appeal, the Respondent Authority has defended the impugned order on the ground that the applicability of the Act could be decided in the light of the provisions of the Act. Letter of coverage dated 27.12.1985 is a simple reminder. The liability of the Appellant Establishment to pay the employees provident fund dues of its employees since September, 1986 has been adjudicated in separate proceedings under Section 7A of the Act and is final between the parties, payment U/s 14-B and 7-Q are consequential to the main order, thus according to the Respondent Authority, there is no error of law and fact in the impugned order. The Respondent Authority has taken a case that the act is a beneficial legislation, hence any provision which is capable to two interpretations, the interpretation which furtherance the beneficiaries shall be taken, it is also the case of Respondent Authority that under the Act, Appellant Establishment is under obligation in law to deposit PF dues of its employees within time framed, failing which they make themselves liable for interest and damages. The defaults are for a long period and recurrent hence, the impugned order, finding and assessment have been recorded correctly in law and fact.

The Appellant Establishment has further filed a rejoinder wherein they have mainly reiterated their case.

I have heard argument of Mr. Uttam Maheshwari, Learned Counsel for the Appellant Establishment and Mr. Jubin Prasad, Learned Counsel for the Respondent Authority. I have gone through the written submission filed by the Appellant Establishment and have gone through the record as well.

On perusal of the record in light of rival arguments following point comes up for determination.

"Whether the finding and assessment of the Respondent Authority that the Appellant Establishment has committed default

by way of delayed deposit of PF dues of its employees for the period under the impugned, hence is liable to pay penal damage u/s 14B of the Act and assessment has been recorded correctly in law and fact or not?"

Perusal of impugned order dated 12.09.2017 reveals that the Respondent Authority addressed four arguments raised by the establishment before it, the ***first argument*** was that there was a double calculation of interest and damages for the period from January, 2000 to 25 September, 2008 in the statement regarding calculation of interest and damages which is in violation of circular dated 29.05.1990 issued by the EPF Organization itself providing that, defaulters shall be liable to pay interest at the rate specific in Column I that is from 5% to 25% u/s 7-B of the Act whereas in the present case interest as well damages have been charged doubled. The Respondent Authority makes an observation that the circular dated 29.05.1990 is only administrative in nature it is against the express provisions under the Act and the Scheme hence, do not have binding effect. He has referred to para 6D and 7 of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which is as follows:-

6D. Laying of schemes before Parliament.—Every scheme framed under section 5, section 6A and section 6C shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme, or both Houses agree that the scheme should not be framed, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

7. Modification of scheme.— (1) The Central Government may, by notification in the Official Gazette, add to 3 amend or vary, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be

comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

He further observed that judgment of *Roma Henny Security Services v/s Central Board of Trustees* referred by Hon'ble High Court of Delhi which provides that damages u/s 14-B of the Act was inclusive of interest before the amendment in the Act was incorporated in 2008 by way of incorporating section 7-Q of the Act regarding interest as a separate provision. With this regard, the Respondent Authority observes that since this case was decided by Hon'ble High Court of Delhi and the Respondent Authority has decided a case in Madhya Pradesh this judgment is not binding on him.

Learned Counsel for Appellant Establishment has submitted that the EPF Organization works in whole of the country hence is bound and guided by as well mandated under law to follow the judgment of Hon'ble Supreme Court and Hon'ble High Courts as well principles of law laid down in it. Learned Counsel further submits that in the impugned judgment itself the Respondent Authority has relied on judgment of *Hon'ble Allahabad High Court in case of R.P.F.C. v/s Allahabad Canning Company* on the point of limitation.

On perusal of impugned order, I find that in page No. 3 of the order in para 4, the Respondent Authority has relied on judgment of Hon'ble High Court but in para 1 at page No. 5 of the impugned order he has refused to follow law laid down by Hon'ble High Court of Delhi on the ground that he is not under supervision and superintendence of Hon'ble High Court of Delhi under Article 227 of the Constitution of India, by his these observations he contradicts himself to the extent of absurdity.

There is force in the submission of Learned Counsel for Appellant Establishment that the Respondent Authority cannot refuse to follow the direction of his organization on the ground that organization does not have competence to issue a direction. In my view, if he is of the opinion that these directions are against law, he may take this point with the

department but refusing to follow is administration in subordination, how is organization tolerating it, is a matter between him and the organization.

The Respondent Authority further observes that if the contention of the Appellant Establishment that 7-Q should not be charged for period from 07, 1997 to 09, 2008 there would be a loss to the organization and it will be against the natural justice as well have bad affect on financial aspect of the organization, the Respondent Authority was at liberty to make suggestions in this respect to his administrative superiors, he is required under law only to follow the law and judgments of superior Courts including Hon'ble Supreme Court and Hon'ble High Courts, his this observation and finding is also against law and cannot be sustained.

Thus in light of above discussion, the finding of Respondent Authority that the Appellant Establishment is under obligation to pay interest u/s 7Q and damage u/s 14 B of the Act both on delayed deposits before the period of amendment in 2008 in the Act was made effective which made separate provisions for interest u/s 7-Q of the Act. Before the amendment there was section 14-B of the Act regarding levy of penal damages which were inclusive of damages and interest, is held to have recorded wrongly in fact and law and is liable to be set aside.

The Respondent Authority further mentions about the submissions of the Appellant Establishment that simply because of depositing difference in back wages out of inadvertence which the Appellant Establishment was not under obligation of law to deposit, they cannot be held to be liable to pay penal damages also and has recorded finding that since orders u/s 7-A and 7-B of the Act in this respect are final between the parties and have been complied with, the Appellant Establishment is liable to pay penal damages also.

That section 2(b) of the Act defines 'basic wages' which is reproduced as follows:-

"2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime

allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;"

The very definition of basic wages shows that ***they are earned by the workman while on duty or on leave.*** When the back wages were not even awarded by the Courts simply because of the fact that they were paid by the employer will not mean that the wages were in fact earned by the workmen or due.

As regards, the part of impugned order which relates to damages under section 14-B, this provision is being reproduced as under:-

"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 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."

Learned Counsel further refers to *para 26 of The Employees' Provident Fund (EPF) Scheme, 1952* (in short the ***Scheme***) which grants power to the Board to grant complete or partial waiver with respect to damages, which is being reproduced as follows-

"26. Classes of employees entitled and required to join the fund.

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become

and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees [fifteen thousand rupees] of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."

34(a) Scheme;…….

The use of word **'*May*' indicates that damages are not mandatory, rather they are discretionary**. Following judgment require to referred to in this respect-

Hon'ble Calcutta High Court in ***Murarka Paint & Varnish Works Ltd. Vs. Union of India 1976 Lab IC 1453*** has held as under:

"Though the liability of the employer to the provident fund of employees is statutory, it does not follow that belated payment would always attract imposition of damages. The authority is obliged to find out how the beneficiaries have been affected by the non-payment of contribution to their fund."

Hon'ble Supreme Court in ***ESIC vs. HMT 2008 (1) SCALE 341*** has observed that:

"21. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavor should be made to construe such penal

provisions as discretionary, unless the statute is held to be mandatory in character.

25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.

26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damagers and/or the quantum thereof."

Hon'ble Apex Court in ***McLeod Russel India Ltd. Vs. Regional provident Fund Commissioner (2014) 15 SCC 263*** has held as under:

"11. ……. the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100% of the arrears have been imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B it will be only logical that mens rea and/or actus reus was prevailing at the relevant time."

Further, the **Hon'ble Supreme Court in** ***Assistant Provident Fund Commissioner, EPFO & Anr vs. Management of RSL Textile India Private Limited (2017) 3 SCC 110*** has observed as under:

"following McLeod Russel India Ltd., (2015) 15 SCC 263, since presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under S. 14-B, High Court or appellate authority or original authority having found no mens rea and/or actus reus, respondent(s) could not be held liable under S. 14-B"

Hon'ble Punjab & Haryana High Court in ***Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal & Anr. (2016) 148 FLR 311,*** dismissing the appeal has held as under:

"5. The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstance or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal"

Hon'ble High Court of Chhattisgarh **in** ***M/s Mohanti English Medium School vs. Employee Provident Fund & anr. 2019 (161) FLR 289 (Chhti)*** has held as under:

"9. Very recently, the Supreme Court in the matter of Assistant Provident Fund Commissioner, EPFO and another vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director, relying upon the earlier judgment rendered in the matter of Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable.

10. Applying the principle of law laid down by the Supreme Court in the above stated judgements to the facts of the present case, it is quite vivid that there is no finding recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the employer and as such, in absence of finding with regard to mens rea/actus reus on the part of the employer/petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained."

Hon'ble Calcutta High Court in W.P. No. 8527 (W) of 2015 ***Tirrihannah Company Ltd. Vs Reginal Provident Fund Commissioner decided on 3107.2018*** *has held as under:*

> ***"In HMT Ltd. (supra) Supreme Court declared, conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative. Existence of mens rea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum thereof.***
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> ***In view of law declared in HMT (supra), which come after Dalgaon (supra) this Court finds no application of the view that liability under section 14B accrues immediately on default for there to be subsequent or late quantification. Impugned order having omitted to provide illumination regarding why it was thought fit to exercise discretion to impose penal damages, corresponding to omission to record opportunity given regarding a defence against imposition of penal damages or mitigation, makes it an order which violates of principles of natural justice. As such impugned order is set aside. The Authority will give opportunity to the establishment, hear out its contention regarding imposition of penal damages or mitigation and make appropriate order."***

Thus, ongoing through the principle laid down by the Hon'ble High Courts and Hon'ble Supreme Court in the case laws, cited hereinabove, it is very much clear that for conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative; moreover, existence of 'mens rea' to contravene a statutory provision has also been held to be a necessary ingredient for levy of damages and quantum thereof.

Learned Counsel for the Respondent Authority has relied on judgment of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, with connected appeals wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability.

The point still remains for that *mens rea* may not have any role in holding the defaulter liable for its civil liability when there is a discretion as

mentioned under section 14-B of the Act, the Respondent Authority and this Tribunal in appellate jurisdiction are fully within its powers to consider the mitigating and aggravating the circumstances in computing the amount of damages. My this view is supported by judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., MANU/CG/0583/2022, para 19*** which is being reproduced as follows-

> ***19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."***

Another judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

> ***"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-***

"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :

(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has been authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of sizeable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other

valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court holds <u>that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-</u>

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial

difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund

Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum. It is stated that S.L.P.(Civil) No.25548 of 2024, is said to be pending before the Hon'ble Supreme Court of India.

Furthermore, Learned Counsel for the Appellant Establishment has referred to judgment of the judgment in the case of ***Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited bearing W.P. No. 14255/2020 decided by the Single Bench of Hon'ble High Court of Madrass***. Judgment of ***Hon'ble High Court of Calcutta in W.P.A. No. 1945/2025, Regional Provident Fund Commissioner v/s Registrar, Central Government Industrial Tribunal, Kolkata & anr.***, and judgment of ***Hon'ble High Court of Chhattisgarh at Bilaspur in the case of Regional Provident Fund Commissioner v/s Bilaspur Spinning Mills & Industries Ltd. & anr., 2022 SCC Online Chh 635***. These judgments also support the same proposition of law as mentioned above.

Hence, in light of the above proposition of law, I am of the considered view that the finding of Respondent Authority that Appellant Establishment is liable to pay penal damages with respect to back wages of its reinstated employees which were never granted by the Courts is held to have recorded incorrectly and against law and is liable to be set aside. The Establishment is held under no obligation to pay any penal damages u/s 14-B of the Act on the deposit of any back wages of reinstated employees or last drawn wages of reinstated employees which was deposited by them under Courts orders.

Learned Counsel for Appellant Establishment has further submitted that the assessment is for period from the year 1986 to 2012. He has referred to a judgment of ***Division Bench of Hon'ble High Court of Meghalaya in W.A. No. 52/2024, Regional Provident Fund Commissioner v/s North Eastern Electric Power Corporation***, in this case it has been laid down that any claim by the provident fund authority, not being Government, beyond three years should be presumed to cause irretrievable prejudice to the employer unless this presumption is rebutted by the provident fund authority. In the case in hand, the Respondent Authority made assessment u/s 14-B of the Act for the period 04/1996 to 03/2012 which was set aside by the Division Bench of Hon'ble High Court under the observation mentioned above. In the case in hand, the assessment is for the period of 1986 to 2012 initial enquiry started for the period from 05/2009 to 03/2012 later on it was extended from 10/1998 to 01/2010 and thereafter finally extended from 09/1986 to 05/2012.

In light of proposition of law laid down by the *Division Bench of Hon'ble Meghalaya High Court*, the Respondent Authority had to rebut the presumption that such an irretrievable prejudice will be caused to the Appellant Establishment by assessment for such a delayed assessment in which they have failed their assessment beyond a period of their first notice which was for the period from May, 2009 to March, 2012 is held bad in law on this ground itself.

Point for determination stands answered accordingly.

No other point was pressed.

In light of the aforesaid discussion and findings, the Appeal succeeds partly.

ORDER

Appeal is allowed. The impugned order dated 12.09.2017 passed by the Respondent Authority u/s 14-B of the Act and assessment is set aside.

No order as to cost.

Date:- 06/05/2026 **P.K. SRIVASTAVA**
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 06/05/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)