

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

EPF Appeal No.- 88/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

M/s Asiatic Oxygen & Acetylene Co. Ltd.
Dhanshree Niketan, 57/1,
Ballygunge Circular Road,
Kolkata 700019

Appellant

Vs.

Regional Provident Fund Commissioner,
Sub-Regional Office,
Bhavishyanidhi Bhawan, Block D,
Scheme No. 32, Pandri,
Raipur - 492004

Respondent

Shri K.B. Singh

:

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Learned Counsel for Appellant.

Shri Jubin Prasad

:

Learned Counsel for Respondents.

JUDGMENT

(Passed on 04th day of February, 2026)

The present appeal is directed against the order dated 22.04.2013, passed by Respondent Authority under section 14-B & 7-Q of *The Employees Provident Fund & Miscellaneous Provisions Act, 1952* hereinafter referred to as the '**Act**', by which the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted the deposit of EPFO dues of its employees within the period from September, 1999, December, 1999, February, 2000 to February, 2002 and has assessed the amount of penal damages u/s 14-B of the Act at Rs. 3,23,737/-, and interest under section 7-Q of the Act at Rs. 3,29,269/-, has directed to pay this amount as penal damages as well the interest.

The case of the Appellant Establishment is mainly that they are incorporated in the State of West Bengal. They have six units out of which four units are closed between the period 1998 to 2004. They manufactured Oxygen and Acetylene gases, they are covered under the Act and have been allotted PF Code. They made substantial losses in the financial years 1993-1994 and 1994-1995 leading to erosion of their net worth in the financial year ending 31.03.1995. Consequent to the sickness and financial difficulties which they are facing, they could not deposit the PF dues within time prescribed for the period mentioned earlier, hence the Respondent Authority issued a joint notice u/s 7-Q and 14-B of the Act to show cause why interest and penal damages not be recovered from them. They appeared through their representative and filed their response dated 15.01.2013 to the notice and stated the reasons for delay deposit. They stated that they were declared sick on 27.11.1995 and were directed to submit rehabilitation proposal to the Operating Agency which could be sanctioned on 27.07.2010. The Respondent Authority passed the impugned findings and assessments ignoring their grounds, hence this Appeal.

Grounds of Appeal, taken in the memo of appeal, are mainly that the impugned order is incorrect in fact and law, the Respondent Authority failed to appreciate the fact that the establishment was entitled to exemption u/s 17(1) of the EPF & MP Act, 1952. Also, failed to appreciate that, under the protective umbrella provided u/s 22(1) of The Sick Industrial Companies (Special Provisions) Act, 1985, no order could be passed against the Appellant Establishment, hence committed error in law.

The Respondent Authority also committed error in law in overlooking the fact of Rehabilitation Scheme passed by BIFR, hence acted against principles of natural justice thus, committed illegality in recording the findings and assessments. The Respondent Authority further ignored the factum of lack of required *mens rea* in recording the findings and assessments, hence committed error in law. The Respondent Authority further committed error in law by not using its discretion, and imposed maximum penal damages.

In its counter to appeal, the Respondent Authority has taken a case that the Act is a beneficial legislation, the Appellant Establishment is covered under the Act and is under obligation in law to deposit PF dues within time frame prescribed under the Act and Scheme. There is provision for recovery of interest and penal damages, the interest and damages recovered are invested with interest earning schemes and income generated is contributed amongst the beneficiaries. Since, it is a beneficial legislation, any provision which is capable of more than one interpretation, the interpretation which furtherance the interest of beneficiaries shall be accepted.

It is further the case of Respondent Authority that order u/s 7-Q with respect to interest is not appealable, the Appellant Establishment appeared during the enquiry and furnished the desired details on 12.04.2013 which were verified by the department and thereafter, the impugned findings and assessments have been passed after giving the Appellant Establishment full opportunity of hearing, the Appellant Establishment is not exempted from deposits as claimed by them, they ceased to be a sick Industrial Company and were discharged from the purview of SICA/BIFR vide order dated 16.01.2013 as their net worth turned positive hence, they were not entitled to waiver of Damages.

I have heard arguments of Mr. K.B. Singh, Learned Counsel for the Appellant Establishment and Mr. Jubin Prasad, Learned Counsel for the Respondent Authority. The Appellant Establishment has filed written submission also which are part of record. I have gone through the written submission and record as well.

After perusal of the record, in light of rival arguments following point comes up for determination:-

(1) Whether the present Appeal is maintainable with respect to order u/s 7-Q of the Act?

(2) Whether the impugned finding and assessment with respect to section 14-B of the Act has been recorded correctly in law and fact?

Point for determination No. 1:-

The impugned judgment is in two parts, one part relates to interest under section 7-Q of the Act and other part is penal damages under section 14-B of the Act. The Act and Scheme framed under the Act do not provide for waiver of interest, section 7-Q reads as under:-

“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.”

The Act provides no Appeal against order u/s 7-Q of the Act, this provision is a consequential provision, the main liability is when it is final, a consequential liability cannot be relooked into.

Learned Counsel for Respondent Authority has further submitted that simply because the order u/s 7-Q of the Act also has been passed on the basis of a composite notice and enquiry, it does not make this order appealable.

On the contrary, Learned Counsel for Appellant Establishment has submitted that when two orders are passed on the basis of composite notice and enquiry, the order u/s 7-Q of the Act will also be appealable he has referred to Judgment of ***Hon’ble High Court of Delhi in the case of Gaurav Enterprise v/s Union of India & Ors., MANU/DE/1843/2021.***

He has referred to the principles of law laid down by ***Hon’ble Supreme Court in the case of Organo Chemicals Industries & Anr. v/s Union of India (55 FJR 283)***, since both the order u/s 14-B & 7-Q of the Act have been passed by way of composite order after a composite enquiry, the Appeal is held maintainable also with regards to order u/s 7-Q of the Act.

Learned Counsel for Respondent Authority has referred to ***Judgment of Hon’ble M.P. High Court, in Sumedha Vehicles Pvt. Ltd. v/s C.G.I.T., Jabalpur***, where an order of this Tribunal though passed separately on the basis of composite notice and enquiry imposing

interest u/s 7-Q of the Act was held not appealable, this was affirmed by Single Bench of Hon'ble High Court of M.P.

Since, this Tribunal is under superintendence of Hon'ble High Court M.P. hence, the law laid down by Hon'ble High Court of M.P. as mentioned above will be binding hence, Judgment of Hon'ble High Court of Delhi does not help the Appellant Establishment in the case in hand. Accordingly, the Appeal u/s 7-Q of the Act, held not maintainable, the Appellant Establishment is at liberty to seek remedy before proper forum.

Point for determination No.1 is answered accordingly.

Point for determination No -2

As regards to part of the findings and assessments with respect to liability, section 14-B of the Act, 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 for Appellant Establishment has submitted that since the Appellant Establishment was under financial distress due to loss of business and delayed payments, they could not deposit the PF dues in time otherwise, they have been regular in deposit of PF dues. He has referred to certain assessments and claims with respect to deposit as

mentioned in the memo of Appeal. He further submits that this shows that there was no required *mens rea* to evade the liability to deposit this fact, was not considered by the Respondent Authority hence, it committed error in law in recording the findings and assessments.

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

Reference of ***Full Bench 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 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. सत्यमेव जयते

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 hold 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:-

(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.

The section 14-B of the Act as reproduced above, itself provides that damages ***may be imposed which means that the damages are not mandatory rather they are discretionary***, the Respondent Authority as well this Tribunal is under obligation in law to consider the aggravating and mitigating circumstances while assessing the damages.

It is established that the matter with respect to Appellant Establishment remained before the BIFR since 1995 the case relating was case No. 44/1995, it was finally disposed by the Board vide its order dated 16.01.2013 and holding that it ceased to be a sick industry within the meaning of section 3(1)(o) of SICA as its net worth turned positive.

No doubt, damages u/s 14-B can be reduced or waived by the Central Board only in the PF Scheme, 1952, as submitted by Learned Counsel for Respondent Authority, the Full Bench Judgment of Hon'ble High Court of Madras, as mentioned above, makes it amply clear that *when the 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 SARFAESI Act or inevitable circumstance which comply the employer to divert the funds to save the industry and employees, there cannot be a levy of damages*. This is also established that Appellant Establishment was under the BIFR since 1995 and ceased to be a sick industry in 2013. Keeping in view the fact for the period of assessment/default with respect to penal damages is included within the period when BIFR proceedings were in progress, this is a mitigating circumstance in light of Full Bench Judgment as referred above. The Respondent Authority is under obligation in law to look into this mitigating factor and by ignoring this factor as well not recording its

finding on this plea the Respondent Authority has committed error in law. Being Court of Appeal, this Tribunal is empowered to go into the facts as well law. Hence, in light of above discussion and findings, it will be in the interest of justice, to reduce the amount of penal damages u/s 14-B of the Act to 25% of the assessed amount.

Point for determination No.2 is answered accordingly.

No other point was pressed.

In light of above discussion and finding, the reference is answered as follows;

ORDER

“Appeal succeeds partly. The liability and the assessment of amount under Section 7-Q of the Act in the impugned order is confirmed. The liability and assessment of amount under Section 14-B of the Act in the impugned order is reduced to 25% of the assessed amount.”

No order as to cost.

Date:- 04/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

Judgment Signed, dated and pronounced.

Date:- 04/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**