

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Justice Ravindra Nath Kakkar

CGIT-1/EPFA/117 OF 2017

M/s Bhupati Infrabuild Service Pvt Ltd ... Appellant

Vs.

Assistant Provident Fund Commissioner ... Respondent

Thane

Presence:

For the Appellant : Mr.H.L.Chheda (A.R)
For the Respondent : Mr. Suresh Kumar, Adv.

Mumbai, dated 27th July 2021.

JUDGEMENT

- 1) This appeal is filed u/s 7(i) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act') against the order dated 30-03-2015 passed by Assistance Provident Fund Commissioner – Thane u/s 14-B of the Act.
- 2) Briefly stated facts of the case is that the establishment M/s Bhupati Infrabuild Service Pvt Ltd (hereinafter referred to as 'Appellant') is a private limited company registered under the Indian Companies Act, 1956 bearing code number MH/203408 has been covered establishment under the Act with effect from 03-05-2010. The establishment



has failed to remit the PF dues and other allied charges within the stipulated period as required under the said Act and scheme for the period from 05/2010 to 01/2014 and show cause notice dated 20-03-2014 for levy of an amount of Rs. 1,55,187 as damages and interest u/s 14-B and 7-Q of the Act has been issued against the said employer and inquiry was conducted.

- 3) Perusal of the impugned order suggests that after due verification of the records, monthly paid challans, and bank statements, the Respondent revised the penal damages and interest to Rs. 3,17,549 and forwarded to the establishment to submit their say.
- 4) Heard both the parties.
- 5) It is stated by the Appellant that the establishment is covered under the Act and since then it had been complying with it regularly without any default. However, due to various reasons such as global recession, late payment receipt from the clients, etc, it was not able to pay the salaries and the PF contributions in the stipulated time. It is also the case of the Appellant that there was no intention on the part of the establishment either to make default or to delay the remittances of the monthly PF contributions. In spite of it, the PF authority did not exercise its discretion in the assessment of the penal damages and interest. Further stated that there was neither willful nor deliberate action on the part of the Appellant as it did not earn any profit by remitting PF contributions belatedly. It is argued that the damages do not arise automatically but the same will have to be decided by the PF authorities touching the merits of the cause and not resorting to the arithmetical calculations. Lastly argued that the date of presentation of cheque was not considered as date of payment by the Respondent. On these grounds, the Appellant has challenged the impugned order in this appeal.



6) In reply to the above submissions, the learned counsel representing the Respondent stated that the Act is for providing social security to the employees. It provides for compulsory deduction of the PF funds from employees and a contribution from the employer which is to be deposited in the worker's account with the EPFO. In this case, establishment has failed to deposit the PF contribution and the statutory dues as required by the law for the period from 05/2010 to 01/14. The inquiry u/s 14-B and 7-Q of the Act was conducted and after considering all the facts and records available with it and exercising powers given by the Act, the assessed damages amounting to Rs. 3,17,549 was levied. Further stated that Appellant failed to remit provident fund contributions/pension fund contributions/administrative charges/employees deposit linked insurance contributions within 15 days of closure of every month for the period in question. Further submitted that the reasons like financial crises, closure of the establishment, exigencies and other various reasons is not acceptable as reasons for late remittances of the PF dues. If the same is accepted, then establishments will give many reasons to avoid timely deposit of the PF and other dues and ultimately the employees would suffer. It is the submission of the Respondent that mens rea is not an essential ingredient for the contravention of the provisions of a civil act. Thus, the intention of the parties committing such defaults becomes immaterial. Delay in realization of the amount paid by cheque or draft cannot be justified as ground for employees to escape liability. It is vehemently argues that mitigating circumstances/ financial difficulties in not complying with the provisions of the act cannot be considered as a factor to escape the penalty provisions enshrined under section 14-B of the Act. Hence, the order dated 30-03-15 is speaking, well-reasoned, and proper in the eyes of law because the damages are imposed in accordance with the rates specified under section 14-B read with para 32-A of the scheme.

7) On the very onset, I would like to mention that this appeal is filed against the composite order passed by the Respondent u/s 14-B and 7-Q of the Act. The amount levied as damages u/s 14-B of the Act is Rs. 1,28,167 whereas the amount assessed as interest u/s



7-Q of the Act is Rs. 1,89,382. Since, appeal against the order passed u/s 7-Q of the Act is not entertainable so the order u/s 14-B of the Act is the only subject matter of this appeal.

- 8) It is relevant to mention that establishment has failed to deposit statutory dues along with the PF contributions within the stipulated period as prescribed in the Act. This has even been admitted by the Appellant in his say during the inquiry and also before this Tribunal, and as such Appellant prays for waiver/reduction only on the grounds that the delay in remittances was not deliberate or willful.
- 9) Perusal of the impugned order reveals that the points that have been raised in this appeal were also raised during the inquiry before the Provident Fund Commissioner. This Tribunal is satisfied with the reasoning assigned by the Provident Fund Commissioner in the impugned order ~~to~~ for not accepting the contention of the establishment. Moreover, to substantiate the grounds based on financial hardships taken in this appeal, no material has been placed either in this appeal or in the inquiry proceedings.
- 10) The appeal memo and oral arguments well demonstrates the desiderata of the law and statutory principles to be adopted while dealing with the decision on the penal damages while at the same time appeal memo/oral arguments have been deficient in providing the real and actual evidences on central subject of the matter. In simpler terms, although the Appellant has strength in putting the arguments for justifying the space in the law and statutory principles in which reduction or waiver for the levied damages can be done but appeal is feeble in presenting the specific reasons to why its establishment should particularly be accommodated in that space. The Appellant offered generic arguments like "belated remittances of PF dues liability to pay the damages does not arise automatically, but the same will have to be decided by the PF authorities by



applying mind to the merits of the case and not by resorting to arithmetic calculations”, but lacked in furnishing sufficient evidences based on which these merits can actually be realized in this particular case.


- 11) The ground stated by the Appellant in para 6.32 of the Appeal memo that “Appellant Establishment has paid the total dues in question much more prior to issuance of the summons u/s 14-B of the Act and there is nil arrears as such damages as levied in the impugned order is not only incorrect but also illegal”, the same is addressed in the decision by division bench of Hon’ble Delhi High Court in Assistant Provident Fund Commissioner vs Hi-Tech Vocational Training Centre on 21-09-2015 wherein it held, *“The statute nowhere contemplates that the default must be in existence on the day when proceedings under Section 14B are initiated. Thus, if there is a default in making contribution to the fund, notwithstanding belated contribution being made to the fund, since the default has already taken place the Commissioner would be within his power to initiate proceedings under Section 14B”*. Therefore, this Tribunal does not find any merit in this contention of the Appellant.
- 12) So far as the contention of the Appellant with regard to the date of presentation of cheque not considered as date of payment by the Respondent, is concerned, it would be pertinent to mention that same issue has been addressed in the impugned order that according to (then existing) statute there is five days grace period for remittance of PF dues. Moreover, Hon’ble Apex Court in its decision in the case of Hindustan Times Ltd versus Union of India reported in (1998) 2 SCC 242 held *“...delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability”*. Therefore, this contention has no force in the eye of law.
- 13) As such, the Appellant miserably failed to satisfy this Tribunal with respect to sufficiency of grounds to waive/reduce the penal damages as contemplated under section 14-B of the Act read with para-32A of the Employees Provident Fund Scheme, 1952.



14) In the view of aforesaid reasons, this appeal fails to convince this Tribunal for any interference in the impugned order and therefore this appeal stands dismissed with no order as to cost.

15) The copy of the order be sent to both the parties, file be consigned to record room after the compliance, and office is directed to upload the copy of this order over official web-portal of this Tribunal.




(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER