

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT 2, NEW DELHI**

Appeal no. D-2/22/2024

M/s. Universal Manpower Services

Vs.

APFC/RPFC, Faridabad

Counsels:

For Appellant:- Sh. J.R Sharma & Sh. Bhupesh Sharma, ld. counsel.

For Respondent:- Sh. Chakradhar Panda, ld. counsel.

Order Dated:- 11.08.2025

1. The appellant has preferred the present appeal assailing the order dated 02.03.2024 passed by the Assistant P.F. Commissioner, Faridabad **under section 14 B & Section 7 Q of the EPF & MP Act (hereinafter referred as 'the Act')** whereby, the appellant establishment is asked to deposit the damages u/s 14B of 'the Act' to the tune of Rs.9,86,444/- for belated payments made by the appellant establishment for the period 31.12.2017 to 05.10.2023. Further, the appellant establishment is also directed to deposit the interest on belated payments under section 7Q of 'the Act' for the same period to the tune of Rs.7,38,339/-

2. Appellant has assailed the order on several grounds inter-alia that it is a proprietor firm engaged in the business of providing security services, skilled and unskilled power to various establishments all over Faridabad. It is further stated on behalf of the appellant that the AR of the appellant submitted before the respondent authority that **M/s Saket Metal Technocraft Pvt. Ltd.** did not make the payment of salary and statutory dues amounting to Rs.4,20,160/- which is still outstanding from this principle establishment. In the written submission dated 17.01.2024 and 23.01.2024, the appellant submitted that the damages and interest have been calculated for the period from 02/2017 onward, while the damages and interest for the period up to 12/2017 have already been levied vide order dated 11.11.2021 passed by the respondent authority u/s 14B and 7Q of the Act. He further requested to revise the calculation sheet after deleting the overlapped period. It is the statement of the appellant that respondent did not consider the

abovementioned pleas and passed the impugned orders which are non-speaking, laconic and unreasoned. Appellant has also taken the plea that he has not been given the benefit as extended vide EPFO Head Office circular dated 15.05.2020 during the covid-19 pandemic lockdown. Relying upon various judgments passed by Hon'ble Supreme Court as well as various High Courts across the country, it is stated on behalf of the appellant that while passing the order, mitigating circumstances are to be seen by the respondent and a speaking order is required to be passed ascertaining the presence of mens rea or actus reus before imposing the damages.

3. It is also stated on behalf of the appellant that the ld. respondent initiated the proceedings after six years and the delay is on the part of the ld. respondent in conducting the quasi-judicial enquiry which is in total violation of the respondent's own circular issued on **20.08.1990**. Further, the respondent also violated its own circular dated **30.12.2021** which provides exemption from damages and interest keeping in view the Covid-19 situation.

4. Per contra, the counsel for the respondent has rebutted the argument submitting his written reply followed by written arguments wherein it is stated that the Act is a social welfare legislation under which the employer is duty bound to make the PF contribution on time and in case of any delay, the employer is liable to pay damages. The appellant has delayed in depositing PF dues for several months ranging from 07 days to 315 days and the delay was repeated for around 492 occasions. It is also stated on behalf of the respondent that the appellant was issued a **demand notice dated 11.10.2023** enclosing a month wise and account wise statement of belated remittances of PF contributions affixing a date of hearing before the ld. respondent on 27.10.2023. It is further clarified on behalf of the respondent that the period in notice is from 31.12.2017 to 05.10.2023 in which the damages and interest has been levied for the remittances made between the said period and there is no overlapping as such the establishment is liable to pay the damages and interest if remittances for a particular wage month is done by depositing more than one challans. This can easily be sorted out by referring to the challan reference number reflected in the statement with the notice issued while initiating the enquiry.

5. Ld. Counsel for the respondent argued that the impugned orders passed u/s 14B and u/s 7Q of the Act are two separate orders bearing distinguished numbers having different pagination and thus, both the orders can't be termed as composite orders.

Therefore, the order u/s 7Q is not appealable before this tribunal. Relying upon the judgment passed in the matter of **M/s Hindustan Times Ltd. Vs. Union of India and Ors./ SCI/07 January, 1998 & Horticulture Experiment station , Coorg Vs. The RPFC**, Ld. counsel stated that financial problems relating to other indebtedness or the delay in realization of the amounts cannot be justified grounds for the employer to escape liability. Ld. Counsel for the respondent also submitted that there is no limitation set out in 'the Act' for taking the inquiry period. The circular dated 20.08.1990 is an internal matter and cannot bypass the law. His further contention is that the appellant himself had admitted the delay of PF contribution and repetition on account of the appellant for around 492 occasion shows the mens rea on part of the appellant. Appellant herein has failed to present any mitigating factors before the assessing authority and all the oral & written contention of the establishment are considered by the competent authority while passing the orders on merits of the case. Reliance is also placed by the respondent on the judgment passed in the matter of **M/s Birla cotton Spinning Weaving Vs. Union of India And Anr.** wherein it is observed that:-

"The maximum that is equivalent to the amount in default is to be applied when number of default exceeds twelve"

6. Ld. counsel for the respondent reiterated that the impugned order is a detailed, reasoned and speaking order which is passed as per provision of the Act after considering all the facts and submission of the parties and therefore, prayed to dismiss the appeal.

7. I have heard the arguments and perused the record. Before parting any opinion on the issue, it is necessary to reproduce the section 14 B as well as Section 7 Q of 'the Act':-

Section 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 5 [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 7 [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, subject to such terms and conditions as may be specified in the Scheme.]

7 Q 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.]

Rate of levy of damages is given in para 32 A of the Employees' Provident Funds Scheme, 1952 and subsequent para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995 which have empowered the CPFC or any such authorised officer to recover from the employer by way of penalty, damages at the rate given below:-

S.No.	Period Of default	Rate of damages (percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than 2 months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty five

8. Now coming to the present appeal, notice has been issued to the appellant establishment on 11.10.2023 asking to pay the damages and interest for the period from 31/12/2017 to 05/10/2023. Further, the respondent has failed to provide any reasoning that as to why department has issued the demand notice after a delay of six years.

9. First of all, the contention of the appellant has to be dealt with respect of the fact that the authority has violated of his own circular issued on 20.08.1990. There is no quarrel that the said circular has been issued. In the said circular, it has been emphasized that all cases under section 14 B have to be finalised within a period of three years. It is further stated that the cases in which the damages are yet to be levied as on 30.06.1990, RPFC should ensure that all such cases are disposed of within a period of three years from now and in case of fresh default, damages shall be levied within the close of three financial years. Said advisory has been issued after considering of all the aspects that limitation has not been set out in 'the Act' and division bench of Hon'ble Allahabad High Court where it is held that where the damages are not levied within a reasonable time, employer is justified in presuming that he is not liable to pay any damages. Though, the matter was reversed by the division bench but held that "the Act' was silent on the question of time limit within which the damages are required to be imposed but it should be reasonably good. Therefore, the argument of the counsel of respondent that the circular is not binding and has no legal aspect is not tenable. The circular issued therein is furtherance of the power exercised by the Central Government under Section 20 of 'the Act'. Where the time limit is not set out, the department was naturally constrained to issue the circular keeping in view the fact that after several years ranging from 03 to 25 years department had used to impose damages for late payment.

10. Therefore, the notice issued for levying the damages for six years is unreasonable and is liable to be set aside for the period from **02/2017 to 10/2020**. Further, the department has not given any relief during the Covid period. It is in the general knowledge that entire business activities has come to stand still. It is very difficult to the business houses to pay the wages to the workers employed by them. At some place wages have been given half or at 30%. Therefore, the respondent should have been lenient in levying the damages for this period which was spanned from 03.03.2025 to 06/2025. Department itself by issuing the circular had asked the

commissioners to waive the damages for the period 04/2020 to 06/2020. Therefore, the argument of the respondent department that they have no power to waive the damages is not tenable.

11. Considering the above circumstances, this tribunal has directed to waive the damages from 03/2020 to 06/2021 and accordingly, the order passed in this regard is set aside.

12. Second aspect of plea of the appellant is that the appellant has been in financial difficulty as such it could not get the bills cleared from the principal employer. For this, appellant has enclosed ledger account of M/s Saket Metal Technocraft Pvt. Ltd. No copy of the balance sheet of the appellant establishment is enclosed with the appeal. Except this, the appellant has not brought anything such as whether any payment has been stopped. Delay in remittances is apparent which is on not only one or two occasions, but it is on 144 occasions ranging from a delay of 07 days to 315 days. Therefore, the respondent rightly has not considered the financial difficulty, considering the length of delay in remittances as well as non-production of documents.

12. In the light of above discussion, the appeal stands allowed partly. The appellant is directed to deposit the amount of damages levied in the demand notice starting from the wage month 07/2021 up to 04/2023 along with the interest amount of Rs.7,38,339/- u/s 7Q of the Act within one month from the receipt of this order. Office is directed to send the copy of this order to both the parties through email. The record of this appeal is consigned to record room.

Sd/-

(Atul Kumar Garg)
Presiding Officer