

**BEFORE THE 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.

ATA No. 374(4)2015

M/s. Minda Nexgan Tech Limited

Appellant

VS.

APFC, Delhi (N)

Respondent

ORDER DATED :-12/1/2022

Present:- Shri Chander Shekhar Yadav, Ld. Counsel for the Appellant.
Shri Devendra, Ld. Counsel for the Respondent.

This appeal challenges the order dated 17/18-3/2015 passed u/s 14B of the EPF and MP Act by the APFC wherein the appellant establishment has been directed to deposit Rs. 70918/- towards damage for delayed remittance of the EPF dues of its employees for the period 05/2011 to 03/2014.

The facts pleaded by the appellant and relevant for consideration of this appeal in short is that the appellant is an establishment registered under the Companies Act 1956 and covered under the EPF and MP Act 1952. When it employed more than 20 employees had volunteered to enroll itself under the Act and for the purpose deposited an amount of Rs. 201951 in shape of a demand draft issued by ICICI Bank Model Town Delhi alongwith the coverage Performa etc on 26.05.2011. The said amount was deposited towards the PF dues of its employees from the date of eligibility. But the officials of the respondent did not deposit the demand draft and the same expired by efflux of time. The officials of respondent on 04.10.2012 returned the demand draft with a request for issue of a fresh demand draft and explained that due to inadvertence the earlier draft could not be deposited by them. The appellant received back the same and issued a fresh demand draft for the self same amount on 04.10.2012 and the same was accepted by the officials of the respondent. Though, there was no delay on the part of the respondent in remittance of the PF dues surprisingly the respondent issued a summon dated 03.06.2014 under section 14B of the Act calling upon the appellant to appear and participate in the hearing of the proceeding held for imposition of penal damage for belated remittance. The authorized representative of the appellant appeared on 21.07.2014 and submitted the details regarding the remittance and pleaded that no delay in remittance was ever committed at their end. But the commissioner without accepting the submission concluded the inquiry

and levied the damage as per the rates prescribed under Para 32A of the EPF Scheme for the period from 05/11 to 03/14. The appellant has thus, stated that the impugned order is based on surmises and conjectures and the commissioner has not given out any finding on the mensrea of the appellant for such delayed remittance. Not only that the respondent also passed an order u/s 7Q of the EPF and MP Act imposing interest to the tune of 40341/- for the delay in remittance. Thus, the appellant has pleaded that the order of the commissioner is palpably wrong and erroneous. The damage being penal in nature, should not have been imposed unless there is a finding on the wrong intention or mensrea on the part of the appellant establishment.

Notice being served the respondent appeared through its counsel and filed a written reply. In the said reply it has been stated that unless the PF dues payable by the establishment is realized by the department it is considered to be a default entailing imposition of damage. The commissioner has passed a reasoned and speaking order and the same cannot be found with fault. While denying all the averments taken by the appellant the respondent has pleaded about the legislative intention behind the provision incorporated u/s 14B of the Act and submitted that the appeal is not maintainable and liable to be rejected.

During course of argument the LD. Counsel for both the parties advanced detailed argument in support of their respective stand.

The Ld. Counsel for the appellant during course of argument submitted that the appellant could not defend itself properly before the commissioner as the proceeding was held in an arbitrary manner. His other contention is that no damage could have been imposed when there was no default and no amount was due. The other limb of his argument is that there being no arrear pending at the time of initiation of the 14B proceeding no damage should have been imposed. In this regard the appellant has placed reliance in the case of **Hi-tech Vocational Training Center vs. APFC, decided by the Hon'ble High Court of Delhi in WPC No 10387/06**, in which it has been held that proceeding for imposing penalty can be initiated only if there are arrears. No proceeding can be initiated if there are no arrears even if there was delay in remittance.

Perusal of the impugned order shows that the inquiry was initiated pursuant to a notice dated 03.06.2014 alongwith a calculation sheet proposing levy of damage and interest. The proceeding was held on different dates during which the assistant manager of the appellant establishment had appeared on 22.07.2014 and submitted that demand draft no. 206946 dated 25.05.2011 for Rs. 201951/- was submitted alongwith the coverage documents and the same was accepted much before initiation of 14B inquiry. Alongwith the appeal memo the

appellant has filed photocopy of the said demand draft alongwith the coverage documents. Whereas it is the case of the appellant that the department did not encash the draft in time and requested for the reissue and the same was acceded to and a fresh demand draft dated 04.10.2012 was submitted, the commissioner ignoring the same found the appellant liable for default and imposed the damage. On behalf of the respondent though reply to the appeal memo has been filed no specific denial to the said stand has been taken. On the contrary, in the impugned order the commissioner has observed that on 22.07.2014 when the establishment informed about the demand draft deposited it was asked to submit the same in blank white and matter was adjourned to 04.08.2014. The authorized representative of the establishment again appeared on 04.08.2014 and intimated that the submissions on behalf of the establishment are already submitted. The impugned order shows that at that point of time the submission of the establishment could not be considered as per the provisions of section 14B of the ACT and the inquiry was closed and reserved for final orders.

It is not understood, what is the observation of the commissioner in page 2 of the impugned order which guided him for imposition of penalty. It seems that the commissioner with least regard to the provisions of law and principles decided by the Apex Court in the case of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and the case of **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017LLR 337** and without rendering any finding on the mensrea of the establishment which is a condition required for imposition of damage, passed the order whimsically. The reasoning assigned by him in the order is beyond comprehension. It will not be out of place to mention that the commissioner proceeded to calculate the damage and impose the same as if it is tax. The said order of the commissioner found suffering from patent illegality and cannot sustain in the eye of law. Hence, ordered.

ORDER

The appeal be and the same, for the reasons discussed in the preceding paragraph is allowed and the impugned order is set aside.

Presiding Officer