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IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM.

Present: - Smt. Indira Barman, M.A., LL.B.,
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.

E.P.F. Appeal No. 01/2025.

Appeal U/S 7-I of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

M/S ERD Foundation, Guwahati.

.....Appellant.

-Vrs-

The Regional Provident Fund Commissioner-I, Guwahati.Respondent.

REPRESENTATIVES:

Mr. Devraj Sahu, Ld. Advocate,
Miss Mayurtrishna Gogoi, Ld. Advocate, for the Appellant.

Mr. P.K. Roy, Ld. Sr. Advocate,
Mr. S.K. Chakrabarty, Ld. Advocate. for the Respondent.

Date of judgement: 29-06-2026

1. This Appeal Under Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 has been preferred by the appellant challenging the order No.NE/GHY/0010226/000/Enf.501/Damages dated 12-07-2024 passed by the Regional Provident Fund Commissioner-I, Guwahati under section 14B of the EPF & MP Act, 1952, whereby the appellant was directed to deposit penal damage of ₹ 93,47,274/- for the period from 23-12-2011 to 16-08-2023. Along with the appeal, the appellant also filed an application under section 7-I of the Act praying for condoning delay and after considering the grounds, the application was allowed vide order dated 07-02-2025 by condoning delay in filing the appeal. Accordingly, the appeal was admitted.

2. The factual matrix in the case as narrated by the Appellant in the memo of Appeal are briefly stated as under:

M/S Education Research & Development Foundation (here in after called as ERD Foundation) a nonprofit making and Charitable Society was established in the year 2006. The Society is covered under the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952 (here in after called as 'the Act') and regularly deposits the contribution of Provident Fund for the regular employees employed by the Society in compliance of the provisions of the Act. The object of the society is to promote Educational Institutions and establishments including Medical College and hospital in the state of North East India intending for advancement, promotion and spread of education for welfare of the public. It is stated that due to wrong consultation, it had, under a bonafide impression that the

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Educational Institutions were not covered under the Act, had defaulted in remitting the PF Contribution for some casual employees during the remittance period from 23-11-2022 to 16-08-2023 (pertaining to wage months April,2008 to June,2022). Further, during the COVID-19 pandemic from April,2020 to February,2022, all the educational Institution were closed and the appellant faced financial crisis on account of non receipt of tuition fees from students. In spite of that, all the employees and staffs were paid their salaries during those periods and there by caused delay in depositing the PF Contribution for the employees and staffs in time. In this circumstances, an inquiry proceeding was initiated under Section 7A of the Act and during inspection conducted by the Provident Fund Organisation, found that the appellant deposited less Provident Fund Contribution for the wage month April,2008 to June,2022. The total PF dues for the material period was calculated as ₹ 67,85,342/- and after adjusting the amount deposited during the inquiry period amounting to ₹ 7,50,556/-, the short deposit of PF dues by the appellant found to be ₹ 60,34,786/-. The appellant accepted the differential PF contribution for the material period amounting to ₹ 60,34,786/- and immediately deposited their admitted PF dues. The appellant also admitted default in depositing the interest as calculated U/S 7Q amounting to ₹ 55,54,308/- However, later on out of the said interest amount, the appellant deposited ₹ 1,59,387/- vide Cheque No.175348 dated 26-11-2024 and ₹ 2,78,243/- vide Cheque No.175190 dated 04-12-2024 and the remaining amount of interest are going to be paid by the appellant in due course. The appellant has no dispute on payment of interest for the defaulted period.

It is submitted that despite voluntary compliance and payment of principal EPF dues alongwith partial interest, the Regional Provident Fund Commissioner-I, Guwahati vide Order dated 12-07-2024, initiated proceeding under Sec. 14B of the Act demanding Penal Damage amounting to ₹ 93,47,274/- (Rupees Ninety-three lakhs, forty-seven thousand, two hundred and seventy-four only), along with the Demand Notice dated Nil directing to deposit the Damage of ₹ 93,47,274/- and interest amounting to ₹ 55,54,308/- , total ₹ 1,49,01,582/- (Rupees One Crore Forty-nine Lakhs One Thousand and Five Hundred and Eighty-two only) within 10 days from the date of issue of the Demand Notice. The said Demand Notice under File No. NE/GHY/0010226/DAMAGE, dated Nil, was received by the appellant on 14.11.2024. It is stated that the proceedings initiated by the respondent Commissioner is in contravention of Sec. 14B of the Act and Demand raised u/s. 14B being not sustainable in law, liable to be set aside. It is submitted that the arrear assessed under Sec.7-A is ₹ 60,34,786/-, whereas the Damage demanded u/s. 14B is ₹ 93,47,274/- which is beyond the scope of Sec. 14B. It is stated that the damage as assessed under Sec.14B is not

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in accordance with the method as prescribed under para 32-A of the EPF Scheme, 1952 and erroneously calculated the damages. Hence, the Damages demanded by the impugned Order under Sec. 14B is not tenable in law.

The Appellant further submitted that charging damage under Sec. 14B is not mandatory rather discretionary in nature. In the present case the appellant failed to deposit the Contribution with a bonafide impression that Educational Institutions registered under Societies Registration Act, 1860 are not covered under the EPF & MP Act, 1952 and upon realising the correct legal position, the Appellant applied for coverage under the Act and voluntarily deposited all contribution for the employees and staff for the whole period along with interest accrued as per law but the respondent did not consider for waiver of the damages, as such the order dated 12.07.2024 is not sustainable in law.

It is stated that during COVID-19 pandemic (March, 2020 to 28th February 2022), all educational institutions in the county were closed due to lock down. Under the circumstances, the students had not deposited the tuition fees. Due to no inflow of funds during those days, the appellant faced acute financial crisis causing default in deposit of PF Contribution by the appellant. It is submitted that due to COVID-19 pandemic, the Regional PF Commissioner committed an illegality in charging damages on the appellant where waiver of damages is permissible under the law.

It is submitted that during COVID-19 pandemic, the whole country was under lock down, and default in payment of contribution during the COVID-19 pandemic is a fit case for waiver of damage at full which the Ld. RPF Commissioner failed to do so. Hence, the damages imposed on the appellant is illegal and liable to be set aside.

In view of the above the appellant prayed to set aside the impugned Order dated 12.07.2024 issued under Sec.14B of the EPF & MP Act, 1952 demanding Damages of Rs. 93,47,274/- (Rupees Ninety-three Lakhs Forty-seven Thousand Two Hundred and Seventy-four only).

3. The Respondent side submitted written reply to the memo of appeal denying the pleas raised by the appellant and stated that the appellant was irregular in depositing the EPF dues and as such proceedings u/s 14B of the Act was initiated against the appellant for belated remittance made during the period 01.04.2008 to 04.01.2024 for the wage months April, 2008 to June, 2022. It is averred in the reply that the appellant themselves admitted that EPF dues were not paid for all eligible temporary/casual employees. During the period of Covid-19 pandemic, the employees continued to remain as employees under the employer and their entitlement for wages was never forfeited. It is contended by the respondent that


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the appellant mixed two separate proceedings under the Act. The proceedings u/s 7A of the Act are initiated for assessment of the dues for defaults made in payment of monthly Employees' Provident Fund Scheme/Employees' Pension Scheme/Employees' Deposit Linked Insurance Scheme contributions and administrative charges. Section 14B of the Act gives power to levy penal damages from the employer for not depositing the contributions and other allied dues within the statutory due date i.e. within 15th of the succeeding month. Section 14B is initiated when the contributions are paid, but belatedly beyond the statutory due date. It is contended that the 7A period is also wrongly mentioned as 04/2008 to 06/2022 instead of correct period 04/2008 to 03/2019. It is stated that 7A inquiry has no relation with the inquiry under section 14 B & 7 Q of the Act initiated against the establishment for failing to deposit the statutory EPF dues within due date and to levy penal damage and interest for such belated EPF. It is further submitted that as the applicant failed to pay the full assessed dues, Bank Attachment order u/s 8F (3) of the Act was issued on 08.01.2025 to recover the dues and an amount of ₹ 56,15,558/- has been received from the bank, therefore penal damage of ₹ 82,57,846/ u/s 14B is still due. It is stated that since the appellant is ready to remit the levied amount of ₹ 55,54,308/- u/s 7Q of the Act, hence the appellant is agreeing to the belated payment. Therefore, when delay has been accepted u/s 7Q of the Act, the delay will be applied for calculating the dues u/s 14B of the Act.

It is stated that the order u/s 14B and 7Q dated 12-07-2024 were duly communicated to the appellant on 16-07-2024 which were received by them on 14-11-2024 and since no payment was received, notice of demand was issued on 08-11-2024 directing the appellant to pay the dues within 10 days of issuance of the notice. It is submitted that the appellant vide letter dated 18-04-2024, has not disputed the dues payable and agreed to the calculation made u/s 14B and expressed their willingness to pay the dues under section 14B and 7Q of the Act, as such the appeal is barred by the principle of estoppel. It is submitted that the appellant had never applied for reduction or waiver of damages as per the terms and conditions stipulated in para 32-B of the EPF Scheme, 1952 for consideration of the Central Board, as such the order u/s 14B is in accordance with the EPF scheme, 1952. Therefore, the respondent prayed to dismiss the appeal.

4. Appellant relied the following judgements:

- i) 2024 SCC(AP) 551 Reddy Enterprises -vs- Union of India
- ii) (2017) 3 SCC 110 Assistant Provident Fund Commissioner EPFO -vs- Management of RSL Textiles India Pvt. Ltd.
- iii) 2001 (3) Supreme 198 M/S K. Streetlite Electric Corporation -versus- Regional Provident Fund Commissioner
- iv) (2014) 15 SCC 263 MCLEOD Russel India Limited -versus- Regional Provident Fund Commissioner.


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5. Respondent placed reliance the judgment reported in (2022) 4 SCC 516 Horticulture Experiment Station Gonikoppal, Coorg -versus- Regional Provident Fund Organization.

6. Having carefully perusal of the impugned order, memo of appeal, the written reply of the respondent, the statement showing amount payable under section 7Q and 14B and the case laws relied by both sides mentioned above and having heard the learned counsel for the parties, this court proceeds to record its findings as follows:

7. Section 14 B of the Employees Provident Fund and Miscellaneous Provisions Act,1952 (herein after called as 'the Act') which is the subject matter in this appeal, reads 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.

8. A bare reading of Section 14B makes it clear that the power of the concerned officer to levy damages U/S 14B is discretionary and not automatic. The use of the word 'may' in the section confers discretion upon the authority while determining whether damages should be imposed and, if so, to what extent. The section also states that the damages to be levied "shall not exceed the amount of arrears".

9. Para 32- A of the EPF Scheme,1952 prescribes the rate of damages payable under section 14 B on a graduated scale, depending on the period of default. Para 32 B of the EPF scheme prescribes the procedure for waiver or reduction of damages levied u/s 14 B of the Act in relation to an establishment specified in second proviso to section 14 B by the Central Board.

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10. Here, the Respondent commissioner in the impugned order dated 12-07-2024, levied damages of Rs.93,47,274 under section 14 B of the Act. The arrear of PF contribution as assessed under section 7A, is Rs. 60,34,786/- On a bare reading of section 14 B, it appears that the damages recoverable shall not exceed the amount of arrears. The learned advocate for the appellant argued that the demand of Rs.93,47,274/- therefore prima facie exceeds the principal arrear as assessed u/s 7 A of the Act. The Respondent's contention that the '7A period' refers to a different period (April, 2008 to March,2019) while the 14 B proceedings relate to the period April, 2008 to January,2024 may explain a larger base amount for the 14B calculation; however, the respondent has failed to prove any detailed calculation sheet demonstrating compliance with the graduated rate structure of para 32 A. In absence of such detailed computation as per 32-A of the EPF scheme,1952, this Court finds that the computation of damages requires re-examination. Para 32 -A of the Employees' Provident Fund Scheme,1952, outlines different rates of damages based on the duration of default.

11. In the case of MCLEOD Russel India Pvt. Limited -vs- Regional Provident Fund Commissioner (2014) 15 SCC 263, the Apex Court observed that ".....the presume or absence of mens rea and/or actus reus would be a determinative factor in imposing damages u/s 14-B, as also the quantum thereof since it is not inflexible that 100 percent of the arrears have to be 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. Same principle was reiterated in the case of Assistant Provident Fund Commissioner, EPFO -vs- Management of RSL, Textiles India Pvt. Ltd., (2017) 3 SCC 110.

12. Further during COVID-19 pandemic, educational institution including those run by the Applicant were closed for prolonged period pursuant to government direction from March,2020 to February,2022. During this period, tuition fees, the prime source of income for educational institutions, were not received.

In the case of Vegetable Vitamines Food Co. Ltd., -vs- RPF Commissioner (1994)2 cur L.R. 1062 (Bom), the Hon'ble Bombay High Court held that where the management was disabled from paying Provident fund contributions due to circumstances entirely beyond its control and as soon as it was practicable, paid the same, the damages for delayed payment could be mitigated to nil damages. The default in the present case for the COVID-19 period (April,2020 to February,2022) falls squarely within the principle of force majeure and circumstances beyond control. The closure of all educational institutions by Govt. mandate combined with the consequent non-receipt of tuition fees from students created an acute financial crisis for the appellant. Despite this, the Appellant continued to pay salaries to its


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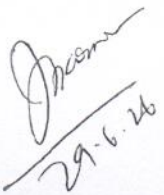
employees and staff throughout the pandemic period. The delay in depositing P.F. contributions during this period was not willful or contumacious rather was caused due to pandemic financial constraint. The respondent commissioner has not given any cogent justification for refusing to waive or to reduce the panel damages for at least the pandemic period.

13. The Respondent side vehemently argued that the Appellant vide letter dated 18-04-2024 agreed to the calculation u/s 14 B of the Act and expressed willingness to remit dues and as such the appeal is barred by estoppel. But by expressing willingness to pay dues u/s 14B does not amount to estoppel in absence of any settlement deed or any agreement and cannot be construed as waiver of the Appellant's right to challenge the validity on quantum of the order before the appropriate forum. Estoppel requires unequivocal representation, acceptance of legal position and detriment to the another party arising there from - none of which established in the present case. As such I find no merit in the argument.

14. The appellant further argued that the appellant was on belief that Educational Institutions registered under the Societies Registration Act, 1860 are exempted from the Act. However, upon being knowing, the appellant deposited all dues and interest and is continuing to make payments which indicates its good faith and there was no intentional delay in remittance of Provident Fund Contribution and there is no mens rea. In the present case, Appellant's conduct-volumlary deposit of ₹ 60,34,786/- on principal, deposit of interest of ₹ 4,37,630/- and continuing payment clearly shows compliance efforts of the Appellant.

15. Learned advocate for the respondent side placed reliance on the judgement of Horticulture Experiment Station Gonikoppal, Coong -vs- Regional Provident Fund Organization (2022) 4 SCC 516 wherein the Hon'ble Supreme Court held that any default or delay in payment of EPF contribution by the employer is a sine qua non for imposition of damages u/s 14B of the Act and mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligation and liabilities. On going though the judgement, it shows that it merely dispenses requirement of proving mens rea and does not eliminate the 'discretion' vested u/s 14 B of the Act. Moreover, in that case no mitigating circumstances was found to justify reduction. During the outbreak of COVID-19, when lock down was imposed, circular dated 15-05-2020 was issued by the Govt. the relevant portion of which is as follows.

“Considering the difficulty faced by the establishment in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is


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evident that such delays are without mens rea of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Digester Management Act,2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of section 14 B of the EPF Act. Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases”

16. In the case of Reddy Enterprises -vs- Union of India decided on 04-03-2024, the Hon’ble Supreme Court, discussing the impact of Covid 19 lockdown period and the circular instructions dated 15-5-2020 emphasized that delays during the lockdown period should not attract penalties. The Hon’ble Supreme Court also emphasized the principle of natural justice and legal obligation not to levy interest during the Covid pandemic.

17. In the present case, the order imposing damages covers a period when lock down was in force. The Appellant’s Bonafide belief regarding EPF coverage and its voluntary compliance are mitigating factors justifying reduction in the quantum of damages for the remaining period.

18. The respondent’s contention that the appellant never applied for reduction or waiver under para 32 B of the EPF scheme,1952 before the Central Board has merit in so far as the provision u/s 32-B is concerned. However, the absence of an application under para 32 B does not preclude from examining the proportionality of the damages levied in an appeal preferred u/s 7-I of the Act and it does not extinguish the obligation of the adjudicating authority to exercise its direction under section 14B of the Act.

19. In view of the forgoing discussion, I am of the opinion that the default on the part of the Appellant was not willful and deliberate. Further Covid-19 pandemic from April,2020 to February,2022 constrains a circumstance beyond Appellant’s control justifying waiver or mitigating of penal consequence but the Respondent Commissioner failed to give due weight to these circumstances and without considering as to whether facts of the case justified 100% levy of damages, passed the impugned order imposing damages u/s 14B of the Act.

20. In result, the impugned order No.NE/GHY/0010226/000/Enf 501/Damages dated 12-07-2024 passed by the Regional Provident Fund Commissioner, Guwahati under section 14 B of the EPF & MP Act,1952 is hereby set aside to the extent it levies penal Damages u/s 14B of the Act. The matter is remanded to the Respondent Commissioner with direction to



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recalculate the penal Damages under section 14 B in accordance with para 32 A of the EPF Scheme with consideration of financial hardship occasioned delay due to the Covid 19 pandemic period (March,2020 to February,2022). The amount already remitted by the Appellant towards the Penal Damages shall be adjusted against the recalculated damages. The interest avail under section 7Q which the Appellant has already admitted and partially deposited, shall be paid in full by the appellant within 90 (ninety) days of receipt of this order. The respondent is directed to pass fresh order within 60 (sixty) days from the date of receipt of this order after affording opportunity of hearing to the Appellant.

21. The amount of ₹ 56,15,558/- already recovered through Bank attachment u/s 8F (3) of the Act shall be adjusted against the recomputed damages and any excess recovery, if established shall be refunded to the Appellant.

22. The appeal is accordingly partly allowed in the above terms. No order as to costs.

23. Let copy of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.


(Indira Barman),
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.