

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

**Appeal no. D-2/25/2024**

**M/s. Seasons Textiles**

....Appellant

Through:- Sh. Haribansh Manav, Ld. Counsel for the appellant.

Vs.

**APFC, Noida**

...Respondent

Through:- Ms. Santwana Aggarwal, Ld. Counsel for the respondent.

**Order Dated:- 05.06.2026**

The appellant, an establishment covered under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act')**, has assailed the orders passed under section 14-B and Section 7-Q dated 28.03.2024 of the Act, whereby the respondent assessed the damages and interest to the tune of Rs. 11,67,834/- and Rs. 7,30,260/- respectively, for the period from 29.09.2017 to 28.04.2022, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

The appellant has challenged the impugned orders on several grounds, inter alia, that the said orders are non-speaking, unreasoned, stereotyped and cryptic in nature, having been passed without application of judicial mind; that the enquiry proceedings were merely an eye-wash intended to harass the appellant; and that the enquiry officer failed to consider the reply filed by the appellant to the show cause notice dated 23.08.2022, wherein the appellant had segregated the entire enquiry period into two parts, namely, from 07/2017 to 02/2020 and from

03/2020 to 04/2022. It has been further submitted that the delay during the period from 07/2017 to 02/2020 occurred due to acute financial difficulties faced by the establishment on account of the imposition of GST on the garment and textile industry, for which it had to avail loans from various financial institutions such as Aditya Birla Financials Ltd., Tata Finance Ltd., Capital First Ltd. and ECL Finance Ltd. to meet payment of wages and other expenses. It has also been submitted that the respondent levied damages and interest even for the period from 03/2020 to 04/2022, which, according to the appellant, was contrary to the respondent's own circular dated 15.05.2020. On these grounds, the appellant prayed for setting aside and recall of the impugned orders.

The respondent filed a counter-reply to the appeal raising several preliminary objections, stating that the appellant has suppressed the material facts and has not approached this Tribunal with clean hands. It is further submitted that the appeal against the order passed under section 7Q of the Act is not maintainable. Reliance was placed upon the judgment of Hon'ble Supreme Court of India in **M/s. Organo Chemical Industries & Anr. Vs. Union of India & Ors. (1979) 4 SCC 573** where it was categorically held that section 14B of the Act was enacted to deter the employers and to thwart them from making defaults in carrying out their statutory obligations to make payments to the Provident Fund.

On merits, the respondent denied the averment that the reply filed by the appellant had not been considered. It was submitted that the appellant had admitted the delay, and that the impugned orders were passed after due consideration of the submissions made by the appellant. It was further submitted that the Covid-19 period had already been considered while passing the impugned orders, and in pursuance thereto, a revised calculation sheet had also been provided to the appellant. So far so the plea of financial difficulty is concerned, the same is of no relevance in proceedings under section 14B and 7Q of the Act. Accordingly, it was prayed that the appeal is liable to be dismissed with costs.

The appellant filed a rejoinder denying whatever had been stated by respondent in its reply.

I have heard the arguments advanced on behalf of both parties, perused the record and gone through the impugned orders. Before proceeding further, section 14B and 7Q of the Act are required to be reproduced herein:

**14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund 3[, the 2[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 4[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, 6[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:] 8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 9 [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.]**

**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 arguments of the appellant are centered around the plea that it faced difficulty due to introduction of GST and was compelled to take financial assistance of several private banks and the other factor is due to the Covid-19 pandemic, the appellant couldn't deposit the provident fund contributions on time.

On the other hand, the contention of the respondent is that financial problems are not a ground for reduction or waiver of damages under section 14-B of the Act. So far so the Covid-19 period is concerned, the respondent had already considered the period of April and May 2020, and a revised notice was issued to this effect. In all, the counsel for the respondent submitted that the order passed by the respondent is a reasoned order.

On the issue of *mens rea*, the Ld. Counsel for the appellant has relied upon the judgment of Hon'ble Supreme 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 **DCW Employees Co-operative Canteen Pvt. Ltd vs. P.O. EPFAT, 2018 LLR 672**, decided by the Hon'ble High Court of Madras, where it was held that *mens rea* is an important factor to be considered while levying damages. He has also placed reliance upon **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017 LLR 337**, where the Hon'ble Supreme Court held that *mens rea* is required before levy of damages. It is further submitted that the respondent even preferred a review petition under article 137 of constitution of India seeking review of the said judgment, where the Hon'ble Supreme Court dismissed the said petition and upheld the impugned judgment dated 13.11.2013. Therefore, the judgment in *RSL Textile India Pvt. Ltd.* attained finality.

The Ld. Counsel for the appellant further submitted that the respondent has not given any reason for levying damages at maximum rate. According to the appellant, due to introduction of GST, it was compelled to comply with the financial standards fixed by banks, and therefore, could not deposit the PF contributions

within time. It is further contended that due to the outbreak of Covid-19 also, it couldn't deposit the contributions in time.

On the other hand, the Ld. Counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court of India in **Horticulture Experiment Station, Gonikoppal, Coorg vs. the RPFC (Civil Appeal No. 2136 of 2012 order dated 23.02.2022)** where it was held that any default or delay in the payment of EPF contribution by the employer under the Act is a *sine-qua-non* for imposition of levy of damages under section 14B of the Act, and *mens rea* and *actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations.

I have given my thoughtful consideration of the said contention. The judgment in *Mcleod Russel India Limited and Horticulture Experiment Station (Supra)* are of equal strength of benches. I have also gone through the judgment of Hon'ble Supreme Court in **Sandeep Kumar Bafna vs. State of Maharashtra & Others, AIR 2014 SC 1745** where it has been held that a statement of law pronounced by a Division Bench is binding upon a subsequent Division Bench of same or lesser strength. If any contrary view is expressed by a later bench, the same would fall within the category of *per incuriam* and the earlier judgment of the co-ordinate bench would prevail.

Looking at the facts in hand, the commissioner imposed the damages and interest to the tune of Rs. 11,67,834/- and Rs. 7,30,260/- respectively, for the period from 29.09.2017 to 28.04.2022. So far so the period from 03.2020 to 06.2021 is concerned, the same falls within the Covid-19 pandemic period. This Tribunal has already considered in several matters that businesses and industries had virtually come to a standstill during the said period. Although a three month concession was granted by the respondent, the same cannot be said to be sufficient in view of the financial hardship faced by the establishments. The second wave of Covid-19 between February 2021 and June, 2021 was even more dangerous. In these circumstances, the levy of

damages by the respondent for the period from March 2020 to June 2021 is liable to be recalled and set aside.

So far so, the damages levied for the period from 29.09.2017 to February, 2020 and from July 2021 to 28.04.2022 is concerned, the respondent has not given any reason as to why it levied damages at the maximum rate. Considering the plea of the appellant that it had faced financial difficulty on account of imposition of GST on garment and textile industry for which it had to avail loans from various financial institutions, this Tribunal is of the opinion that damages of 40% for belated remittance of PF dues between September 2017 to February 2020, and July 2021 to April 2022 is appropriate.

In terms of the above discussion, the appeal is partly allowed. The appellant is directed to deposit the damages for the said period within four weeks from the receipt of this order. The office is directed to send a copy of this order to both the parties through email. The record of this appeal is consigned to record room.

(Atul Kumar Garg)  
Presiding Officer