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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 831 OF 2012

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Judgments Reserved on: 22.5.2012.

Judgment Delivered on: 13.7.2012

ROMA HENNY SECURITY SERVICES PVT. LTD. . . . PETITIONER

Through : Mr. S.P. Arora, Advocate.

VERSUS

CENTRAL BOARD OF TRUSTEES, E.P.F.
ORGANIZATION THROUGH ASSISTANT
P.F. COMMISSIONER, DELHI (NORTH)

. . . RESPONDENT

Through: Ms. Aparna Bhat, with Ms. Raj
Kumari Banju, Advocates.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. The petitioner has filed the instant petition under Article 226 of the Constitution of India wherein various prayers are made which include a declaration that provisions of Section 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the PF Act') are ultra vires. However, the theme of the petition is to challenge the interest levied or received under Section 7-Q of the PF Act amounting to ₹4,53,886.00 on 3.2.2011 and ₹13,775.00 on 21.7.2007 mainly on the ground

that when the damages for late payment of provident fund dues are recovered from the petitioner by passing orders under Section 14 of the PF Act, the interest as prescribed under Section 7-Q of the PF Act cannot be independently charged as that is inbuilt in the slabs of damages and charging of this interest would amount to double payment by the petitioner. The petitioner is an establishment engaged in supplies of manpower for the purposes of security and surveillance to different establishments and is covered by the provisions of the PF Act. It is allotted Code Number DL-27506. It appears that the petitioner had not paid provident fund contribution and other contribution including administrative charges payable under different provisions of the said Act in time and because of this late payment the Assistant Provident Fund Commissioner initiated proceedings for recovery of damages under Section 14-B of the Act. These proceedings culminated in passing of order dated 26.11.2010 holding that the establishment had failed to pay, within prescribed time limit:-

- (i) The Provident Fund contribution;
- (ii) The Employees' Pension contribution;
- (iii) The Insurance Fund contribution; and
- (iv) The Administrative charges For the period from 06/99 to 06/04, 03/05 to 05/05, 07/05 to 01/07, 05/07 to 08/08, 10/08, 10/08.

2. For this reason, damages in the sum of ₹ 7,10,989/- were imposed under Section 14-B of the Act; details of which are as under:-

For the period from 06/99 to 06/04, 03/05 to 05/05, 07/05 to 08/08, 10/08, 10/08 totalling ₹ 710989/- be recovered as per the account wise

schedule indicted below from the employer in relation to M/s Roma Henny Security Services Pvt. Ltd. bearing code No. DL/27506:

<u>Nature of damages</u>	<u>Amount</u>	<u>Account No.</u>
P.F. contributions	₹ 165371/-	1
Administrative Charges	₹ 60889/-	2
FPF/EPS contributions	₹456578/-	10
EDLI contributions	₹ 27610/-	21
EDLI administrative charges	₹ 541/-	22

Total ₹ 710989/-
(₹ Seven Lac Ten Thousand Nine Hundred Eighty Nine only)

3. The order further indicated that the petitioner was also liable to remit a sum of ₹ 453886/- towards interest payable under Section 7-Q of the PF Act @ 12% p.a. which provisions come into force vide notification dated 30.06.1997. The account wise detail of the amount payable towards Section 7-Q of the PF Act was furnished as follows:

<u>Nature of interest</u>	<u>Amount</u>	<u>Account No.</u>
P.F. contributions	₹ 105249/-	1
Administrative charges	₹ 38918/-	2
FPF/EPs contributions	₹ 291705/-	10

EDLI contributions	₹ 17654/-	21
EDLI administrative charges	₹ 360/-	22
Total ₹ 453886/-		

4. The petitioner paid the amount of damages of ₹ 7,10,989/- vide cheque No. 632192 dated 28.12.2010. By a separate letter of even date, the petitioner disputed the liability of interest under Section 7Q of the Act on the ground that this amount had already been included in the amount of damages calculated by the respondent. The respondent however, did not accept this plea and issued adjustment orders under Section 8F of the PF Act and attached the current account of the petitioner and by this process recovered a sum of ₹4,53,886/- on 3.2.2011. The petitioner protested against this recovery vide his representation dated 12.2.2011 drawing the attention of the Division Bench judgment of this Court in the case of ***M/S System and Stampings and Anr. Vs. Employees' Provident Fund Appellate Tribunal and Ors.*** 2008 LR 485 which was upheld by the Supreme Court, as the SLP thereagainst was dismissed in *limini*. However, this did not have any effect on the respondent who made a further recovery of ₹ 13775.00 under Section 7-Q of the PF Act on account of late payment of ₹ 4,53,886.00. It is under these circumstances, the petitioner has preferred the instant petition. The challenge to recovery is laid on the following basis:-

- (a) The amount of interest payable under Section 7Q of the Act is already stand included in the slab in damages prescribed by the respondent under Section 14B of the PF Act as specifically held by this Court in *M/s System and Stampings (supra)*.

(b) The respondent does not have any statutory power to charge and calculate any amount of interest under Section 7Q of the Act as the said section is not a charging section and there is no provision in the Act for recovery of the amount of interest calculated under this provision. It is submitted that provision of Section 8 and 8-B to 8-G relating to recovery do not provide for recovery by any throaty and charge under Section 7Q of the Act.

(c) Section 7Q of the Act is *ultra vires* the provision of the PF Act.

5. As far as argument on *ultra vires* of Section 7Q of the Act is concerned, learned counsel for the petitioner gave up the same after some arguments. Even otherwise, provision of an Act cannot be *ultra vires* to the same statute.

6. Insofar as first argument is concerned, we find from the judgment of Division Bench of this Court in *M/s System and Stampings* (supra) that the Court had referred to Office Memorandum dated 29.5.1990 which reads as under:-

“Moreover, now that in the recent amendment to the act, we have already provided for the payment of simple interest at 12% per annum (Section 7Q) payable from the date the amount has become due till the date it is actually paid, it had become necessary to revise the rates of damages and to specify the same in the scheme. Thus, a proposal to revise the rates of damages was accordingly placed before the Central Board of Trustees and the Board in its 119th meeting held on 4th April, 1989 approved the following revised rates of damages with the condition that the position with regard to the incidence of default following the revision of the rates of

damages would be analysed after six months from the date the new rates come into force.

<u>Period of Delay</u>	<u>Revised Rates of Damages</u>	<u>Interest chargeable under Section 7Q</u>	<u>Total</u>	<u>Existing rate of damages</u>
(i) 2 months or less	5	12	17	25
(ii) Over 2 months but less than 4 months	10	12	22	25
(iii) over 4 months but less than 6 months	15	12	27	25
(iv) Over 6 months	25	12	37	25

7. From the aforesaid the Division Bench concluded that the rates of damages were revised payable under Section 14 B of the PF Act by including the payment of simple interest @ 12 p.a payable under Section 7-Q of the PF Act. On that basis, the Court held that no additional interest under Section 7Q of the PF Act was payable once the damages were paid under Section 14B of the Act. The contention of the Provident Fund Department to the contrary was turned down observing as under:-

“6. The circular dated 29.5.1990 provides that all defaulters thereafter shall be liable to pay interest at the rate specified in column 1, that is, from 5 to 25 per cent depending upon the period of default as damages under section 14B of the Act. The defaulters in addition are liable to pay interest chargeable under Section 7Q of the Act at the rate of 12 per cent per annum as mentioned in

the 2nd column. The rates mentioned in column 3 of the circular is the sum total of column nos. 1 and 2. The total amount varies between 17 to 37 per cent per annum depending upon the period of default. Thus, for default of less than two months, the defaulter becomes liable to pay damages at the rate of 5 per cent per annum under section 14B and also interest under Section 7Q of the Act at the rate of 12 per cent per annum. Therefore, the defaulter becomes liable to pay damages under Section 14B and interest under section 7Q at the rate of 17 per cent per annum. This is less than the original rate of damages of 25 per cent per annum as it existed before the circular dated 29.5.1990 was issued. Similarly, for defaults between two months less than four months the defaulter becomes liable to pay damages at the rate of 10 per cent per annum under Section 14B and interest at the rate of 12 per cent per annum under section 7Q after 1.7.1997 or 22 per cent in all. For defaults of more than four months but less than six months each defaulter becomes liable to pay interest and damages at the rate of 27 per cent per annum and in defaults of over six months interest and damages at the rate of 37 percent per annum. Thus for defaults beyond 4 months the amount payable increased from the flat rate of 25% per annum.

7. The stand of the respondent, however, is that even after 1.7.1997 the defaulter is liable to pay "Total" mentioned in column 3 as well as interest at the rate of 12 per cent per annum under section 7Q of the Act or 29%, 34%, 39% and 49% for the respective periods of default. This stand of the respondents cannot be accepted as it is contrary to their own circular dated 29.5.1990. As per the respondent, defaulter will be made to pay interest under Section 7Q at the rate of 12 per cent even when he has paid damages as per the rate mentioned in column 3 which includes interest under Section 7Q. Thus, he will pay interest under Section 7Q twice. It is clear from the circular that once interest is chargeable under Section 7Q

of the Act, the defaulter should be asked to pay damages as per the percentage specified in column 1, that is, between 5 to 25 per cent per annum depending upon the period of default. The third column mentions the total of the revised rate of damages and interest chargeable under Section 7Q. Column 3 cannot be regarded as rate of damages after 1.7.1997, when interest became payable under section 7Q of the Act”.

8. It is an admitted case that Special Leave Petition was filed against this order and the Supreme Court dismissed the same on the ground of limitation as well as on merits vide order dated 16.7.2009.

9. The learned counsel for the respondent tried to wriggle out from the rigors of this judgment by arguing that Section 7Q of the PF Act was introduced in the year 1997 which prescribes payment of interest on the late damages of the provident contribution. It was argued that unlike Section 14B of the PF Act which provides for damages, this provision is compensatory in nature and there is no need to provide any adjudication or give any hearing. The legislative intent was that as soon as any amount becomes due, interest will accumulate automatically till such time the amount is paid. The submission was that insofar as judgment in M/s *System and Stamping* (supra) is concerned, the subsequent circulars were not taken into account which would have clarified the position and resulting into different consequences. Explaining the circumstances in which the office memorandum (taken note of by the Court in the aforesaid judgment) was issued, the respondent states that a proposal was forwarded from the Central Provident Fund Commissioner proposing certain modifications in Section 14B of the PF Act more

particularly in relation to the rates of damages prescribed under para 32A of the scheme. This was a mere proposal which was apparently also accepted by the Board of Trustees but it was not accepted by the Ministry as amendments to the law was not made in line with the proposal. At that time, neither para 32 as mentioned in paragraph 6 hereinabove nor section 7Q had come into force though it was introduced. Section 7Q of the Act was made effective only in July 1997. That in 1997 by virtue of an amendment in the law, section 7Q got introduced.

10. It is further submitted that following the introduction of section 7Q the Commissioners, mainly the Regional Provident Fund Commissioner and the Assistant Provident Fund Commissioners who ordinarily adjudicate 7A and 14B cases raised queries if 7Q and 14B were the same and 7Q and 14B were independent. Following these queries, the department sought clarifications from the parent Ministry which is the Ministry of Labour. These clarifications were then circulated through separate circulars to all the offices. The essence of these circulars was that interest under 7Q of the PF Act is in addition to the damages under Section 14B of the PF Act.

11. Alongwith the Counter Affidavit giving the aforesaid position, the respondents have annexed copy of circular dated 12.9.1997, relevant portion of which reads as under:-

“1. The Sections 7B to 7Q of the EPP & MP Act, 1952 have come into force w.e.f. 1/7/97 vide Notification G.O.R. No. 267 dated 30.6.97 (F.No.V-20025/1/96-SS.II) issued by the Govt. of India, Ministry of Labour.

2. Section 7Q of the EPF&MP Act, 1952 provides that the employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the scheme on any account due from him under this Act from the date from which the amount has become so due till the date of its actual payment. The matter will be placed before the next meeting of DBT, EPF for taking further decision in the matter. Meanwhile, you are advised to take action to levy interest at the specified rate.

3. The EPF & MP Act, 1952 also contains provisions for levying damages for belated payment u/s 14B, para 32-A of the EPF Scheme is related to the recovery of damages for default in payment of any contribution under the scheme. Accordingly, the rate of damages prescribed under para 32-A is related to Section 14-B.

4. You are accordingly advised to take the following action:

I) collect interest at 12% as stated in Section 7Q of the Act until further orders

II) Determine damages u/s 14B.

12. Likewise, vide Circular dated 3.6.1998 it was clarified by the Government of India that interest chargeable under Section 7Q of the PF Act is in addition to the damages recovered under the scheme. This position was reiterated vide circular dated 9.9.1998.

13. The argument of the learned counsel for the respondent needs considerations. It is correct that in the case of *M/s System & Stampings*, Office Memorandum dated 29.5.1998 was referred to by which time though the provisions of Section 7Q were incorporated by the amendment but the

said amendment had not come into force. This provision was made effective from 1.7.1997 and immediately thereafter the circulars as referred by the respondent were issued clarifying the position. Learned Counsel for the respondent is also correct in her submission that these circulars were not taken into consideration by the Court as presumably because of the reason that the attention to these circulars were not drawn. The question that would arise in these circumstances is as to whether the position explained in these circulars dated 12.9.1997, 3.6.1998 and 9.9.1998 is correct or whether the element of interest chargeable under Section 7Q of the Act is already included while imposing damages under Section 14B of the Act.

14. We are of the view that the matter should be referred to the Larger Bench for determination in as much as in case the stand of the respondent is accepted, that would amount to taking a view contrary to the view taken by the Division Bench in *M/s System & Stampings* (supra). Accordingly matter be placed before the Acting Chief Justice, on administrative side, for constitution of a Larger Bench.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

JULY 13, 2012
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