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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1997/2012

REGIONAL PROVIDENT FUND COMMISSIONER, DELHI

..... Petitioner

Through Mr. Shivanath Mahanta, Adv.

versus

M/S DELHI GOLDEN TRANSPORT ..... Respondent

Through None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.10.2012**

1. By this petition the Petitioner challenges the order dated 5th April, 2011 passed by the Employees Provident Fund Appellate Tribunal allowing the appeal of the Respondent and remanding the matter back to the authority with directions to assess the liability in consonance with the circular dated 20th May, 1990.

2. Learned counsel for the Petitioner contends that damages were levied on the Respondent as per provisions under Para 32-A of the Employees Provident Fund Scheme 1952, Para 5 of the Employees Pension Scheme and

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By:AMULYA

Para 8A of the EDLI Scheme @ 17%, 22%, 27% and 37% depending on the period of delay in making provident fund contributions. Further 12% interest on the due amount is mandatory as per Section 7Q of the Act. There was no illegality in the order passed by the competent authority under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act 1950 (in short the Act) directing the Appellant to deposit the damage and interest.

3. I have heard learned counsel for the Petitioner. In *Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, E.P.F. Organization Through Assistant P.F. Commissioner, Delhi (North) W.P.(C) 831/2012 decided on 12th September, 2012* the issue whether further interest can be imposed for the damages came up for consideration. The Full Bench of this Court held that once damages under Section 14B of the Act are recovered, there can be no payment of interest under Section 7Q of the Act as the interest component is already included in the damages imposed under Section 14B of the Act. It was held:

> "12. It is not in dispute that if the judgment of *M/s System and Stamping* (supra) is to be followed, the case is covered in favour of the petitioner. However, we find substance in the submission of learned counsel for the respondent that in the

said judgment the Division Bench entirely rest upon the Office Memorandum dated 29.5.1990 on the basis of which the Bench came to the conclusion that interest element chargeable under Section 7-Q of the Act was included in the table prescribing damages payable under Section 14-B of the Act. As we will demonstrate hereinafter, there were various other subsequent Circulars which were not taken into account. In the first instance, it needs to be pointed out that the Office Memorandum referred to by the Division Bench was dated 29.5.1990. It was issued at the time when Section 7-Q was not made effective. Pertinently, this provision was introduced in the Act in the year 1988 but was made effective only from 1.7.1997. Since the provision was not in force as on 29.5.1990, it appears that by that mechanism which was applied administratively was to include the component of interest while imposing the damages under Section 14-B of the Act. However, the position changed after Section 7-Q of the Act was in force w.e.f. 1.7.1997. The interest on delayed contribution of provident fund became payable statutorily. While this was so, the aforesaid table continued to operate which has now been modified and replaced by the another table made effective from 26.9.2008 and the rates of damages as per the revised table are as under:-

S.N	Period of default	Rate of damages (Effective 26.9.2008)
1	Less than two months (upto 59 days)	5%
2	Two months and above but less than four months (upto 119 days)	10%
3	Four months and above but less than six months (upto 179 days)	15%
4	Six months and above (180 days and above)	25%

13. It is clear from the above that w.e.f. 26.9.2008 the damages under Section 14-B of the Act are charged on the aforesaid basis which would show, for example if the period of default is less than two months, the damages payable are 5%. However, the table which was governing upto this date and is noted in the judgment of *M/s System and Stamping* (supra), the damages for

the period of default of less than two months were 17%. Same is the position in respect of other periods of default when the two tables are kept in juxtaposition it would clearly revealed that the damages are now reduced by 12% at every stage meaning thereby component of interest under Section 7-Q is now removed. The comparison of the aforesaid two would show that upto 26.9.2008 the earlier table continue to govern which included the element of interest under Section 7-Q of the Act. From 26.9.2008 onwards, however the two are segregated. This would clearly bolster the stand of the petitioner that if the earlier table is applied which was so done, interest payable under Section 7-Q of the Act was already included.

14. In the present case, the period for which damages under Section 14-B of the Act are levied is from June, 1999 to October, 2008. Therefore, for almost the entire period interest stands charged by imposing damages under Section 14-B of the Act with the application of rates mentioned in the table prevailing prior to 26.9.2008. It is not the case of the Department that for one month i.e. 27.9.2008 to October, 2008 damages were charged on the rates specified in the new table. When the matter is examined from this angle also we find substance in the argument of the learned counsel for the petitioner that the clarification issued by the Department that interest is to be charged separately would be of no avail. Of course, that may be the legal position. However, the mechanism to charge interest separately was not enforced by modifying the existing table which step was taken only in issuing fresh table making effective from 26.9.2008.

15. We are therefore of the opinion that in *M/s System and Stamping* (supra) the Division Bench took the correct view that damages under Section 14-B of the Act were inclusive of interest chargeable under Section 7-Q of the Act as the present case covers that very period, the respondent had no right to charge the interest under Section 7-Q of the Act additionally

> when it already stood payable in the order passed under Section 14-B of the Act. As the petition succeeds on this ground itself, it may not be necessary to go into the other issues raised by the petitioner."

4. It may be noted that the decision of the Division Bench in *M/s. Systems & Stamping & Anr. Vs. Employees' Provident Fund Appellate Tribunal & Ors. 2008 LLR 485* was taken up in an SLP which was dismissed both on the ground of limitation as well as on merits. In the present case the damages under Section 14B were levied for the period February 1998 to January 2005. In view of the settled legal position, there is no merit in the petition. Petitions is dismissed.

Mukta Gupta

MUKTA GUPTA, J

OCTOBER 11, 2012
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