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

+ Date of Decision: 24.05.2013

% W.P.(C) 5648/2010 and C.M. Appln. No. 11103/2010;
% W.P.(C) 5650/2010 and C.M. Appln. No. 11108/2010;
% W.P.(C) 6675/2010 and C.M. Appln. No. 13201/2010;
% W.P.(C) 6676/2010 and C.M. Appln. No. 13202/2010;
% W.P.(C) 875/2011 and C.M. Appln. No. 1841/2011;
% W.P.(C) 876/2011 and C.M. Appln. No. 1843/2011;
% W.P.(C) 877/2011 and C.M. Appln. No. 1845/2011;
% W.P.(C) 8964/2011 and C.M. Appln. Nos.20217/2011 & 2329/2012;
% W.P.(C) 8967/2011 and C.M. Appln. Nos.20223/2011 & 2330/2012;
% W.P.(C) 8968/2011 and C.M. Appln. Nos.20226/2011 & 2536/2012;
% W.P.(C) 8969/2011 and C.M. Appln. No. 20229/2011 & 2331/2012;
% W.P.(C) 8971/2011 and C.M. Appln. No. 2328/2012;
% W.P.(C) 8980/2011 and C.M. Appln. Nos.20240/2011 & 2530/2012;
% W.P.(C) 2529/2012 and C.M. Appln. Nos.5422/2012 & 6944/2012;
% W.P.(C) 2538/2012 and C.M. Appln. Nos.5435-37/2012;
% W.P.(C) 3522/2013 ;
% W.P.(C) 3538/2013; and
% W.P.(C) 3540/2013.

UP STATE ROAD TRANSPORT CORPORATION..... Petitioner
Through: Ms. Garima Prashad, Mr. Shadab Khan & Ms. Arpan Wadhawan, Advocates.

versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent
Through: Mr. R.C. Chawla, Advocate in W.P.(C.) Nos.6675-76/2010.
Mr. Divey Kant, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The present batch of writ petitions have been preferred by the U.P. State Road Transport Corporation (UPSRTC) to assail the orders passed by the Regional Provident Fund Commissioner (RPFC)/ Assistant Provident Fund Commissioner (APFC) under Section 14-B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (the Act) and the appellate order passed by the Employees Provident Fund Appellate Tribunal, New Delhi (the Appellate Tribunal), the details whereof are set out herein below:

WP (C) No.	UPSRTC REGION & (CODE)	NOTICE PERIOD	Date of notice	APFC/ RPFC ORDER DATED	ATA NO.	APPELLATE TRIBUNAL ORDER DATED	AMOUNT OF DAMAGES LEVIED U/S.14B	AMOUNT OF INTEREST LEVIED U/S.7Q
6675 of 2010	Agra (796)	January 1993 to March 2002	17.09.2004	28.10.2004	998(14)2004	06.07.2010	Rs. 2,70,11,503/-	Rs. 38,77,694/-
2529 of 2012	Allahabad (500)	December 1970 to September 2003	07.12.2007 *	13.06.2008	510(14)2008	06.07.2010.	Rs.1,46,11,365/-	Rs.50,23,741/-
6676 of 2010	Bareilly (857)	May 1961 to February 1999	31.03.2003	28.08.2009	724(14)2009	07.07.2010	Rs.16,47,093/-	Rs.2,77,516/-
875 of 2011	Ghaziabad (503)	August 1995 to June 1998	19.05.2003	27.10.2003	861(14)2003	23.06.2010	Rs.11,97,914/-	Rs.70,625/-
876 of 2011	Ghaziabad (3902)	October 1996 to March 2007	11.07.2008	12.11.2008	919(14)2008	07.07.2010	Rs.7,67,157/-	Rs.1,22,932/-

877 of 2011	Ghaziabad (5525)	November 1996 to August 2000	12.02.2002	26.02.2003	312(14) 2003	23.06.2010	Rs.58,75,201/-	Rs.17,20,968/-
3522 of 2013	Ghaziabad (3902)	December 1997 to August 2001	19.05.2003	31.07.2003	738(14)2003	23.06.2010	Rs.16,94,622/-	Rs.5,85,432/-
8964 of 2011	Gorakhpur (842)	March 2000 to February 2006	21.09.2007	28.02.2008	310(14)2008	07.07.2010	Rs.93,41,477/-	Rs.31,14,236/- (for March 2000 to March 2008)
8967 of 2011	Gorakhpur (846)	March 2000 to February 2007	13.08.2007	29.01.2008	186(14)2008	06.07.2010	Rs.1953134/-	Rs.6,93,349/-
8968 of 2011	Gorakhpur (849)	March 2000 to February 2001	22.08.2007	25.03.2008	289(14)2008	06.07.2010.	Rs.10,29,475/-	Rs.3,42,562/-
8969 of 2011	Gorakhpur (1306)	March 2001 to February 2006	13.08.2007	25.03.2008	288(14)2008	06.07.2010.	Rs.5,87,297/-	Rs.2,23,684/-
8980 of 2011	Gorakhpur (848)	March 2000 to March 2004	24.09.2007	31.03.2008	319(14)2008	07.07.2010.	Rs.33,18,047/-	Rs.12,07,710/-
2538 of 2012	Gorakhpur (850)	March 2000 to September 2004	24.09.2007	24.12.2008	18(14)2009	07.07.2010	Rs.17,95,372/-	Rs.6,37,504/-
5648 of 2010	Moradabad (856)	October 1968 to August 2002	09.05.2003	28.08.2009	713(14)2009	07.07.2010	Rs.1,04,90,614/-	Rs.32,80,890/-
5650 of 2010	Moradabad (854)	November 1996 to February 2007	22.07.2008	16.07.2009	518(14)2009	07.07.2010	Rs. 1,25,34,054/-	Rs. 43,29,835/-
8971 of 2011	Moradabad (856)	July 2000 to April 2002	02.05.2002	29.08.2002	522(14)2002	12.07.2010.	U/s 7A Rs.2,21,34,198/-	Rs.27,92,324/- (up till August 2002)

3540 of 2013	Moradabad (854)	April 2000 to December 2000	12.02.2002 *	26.02.2003	310(14)2003	23.06.2010	Rs.13,14,614/-	Rs.4,31,425/-
3538 of 2013	Saharanpur (736)	March 1996 to August 2000	06.08.2008	07.12.2007	189(14)2008	23.06.2010	Rs.64,25,816/-	Rs.16,78,043/-

(* as supplied by learned counsel for the petitioner)

2. Since common issues have been raised by the petitioner in these petitions, they are being dealt with by this common judgment. In respect of some of the proceedings and orders, certain additional issues are raised, such as in W.P.(C.) No. 6676/2010, which shall be noted hereinafter and dealt with.

3. The case of the petitioner is that it is a statutory authority, functioning directly under the control of the State Government of Uttar Pradesh. It is a corporation constituted w.e.f. 01.06.1972 under Section 3 of the Road Transport Corporation Act, 1950. It has succeeded to the assets & liabilities of the erstwhile U.P. Roadways. The mandate of the petitioner is to provide efficient, adequate, economical and properly coordinated transport services to the public in the State of U.P.

4. The petitioner submits that ever since its incorporation, and prior to that the U.P. Government Roadways have been depositing the provident fund dues of its employees with the provident fund authorities from time to time. The respondent sought to issue notices to the petitioner to initiate proceedings under Section 14-B and 7Q of the Act. The periods for which the petitioner was alleged to be in default, and the dates on which these notices have been issued have been detailed hereinabove. The amount of

damages and interest sought to be levied have also been indicated hereinabove.

5. The submission of learned counsel for the petitioner is that the petitioner Corporation was running into deep losses ever since its incorporation. Consequently, there was some unintended delay in deposit of the Provident Fund dues. However, the dues were deposited, though belatedly, from time to time. Learned counsel submits that by the year 2000, the losses of the petitioner had inflated substantially and were in the range of Rs.600-700 Crores. Learned counsel submits that till the year 2002, the respondent authorities did not issue any notice to the petitioner even under Section 7-A of the Act, let alone notices under Section 14-B and 7Q to levy damages and claim interest. No inspection was carried out, or inspection report prepared to point out any default on the part of the petitioner.

6. Learned counsel submits that the orders passed under Section 14-B of the Act in all these cases are more or less identical. She submits that they were mechanically passed without providing any reasoning or dealing with the submissions of the petitioner. She submits that while in some cases the rates at which the damages have been levied has been disclosed, in other cases the said rates have not even been disclosed. For instance, in the orders passed under Section 14-B dated 28.08.2009 (impugned in W.P.(C.) No.6676/2010), and dated 26.02.2003 (impugned in W.P.(C.) No.877/2011) the APFC has merely stated the amounts claimed on several accounts without disclosing the basis for the computation made. Learned counsel submits that even in respect of the cases where the rates of damages have

been disclosed, a perusal of the same would show that the said rates are even beyond the rates notified in para 32-A of the Employees Provident Fund Scheme, 1952 (the Scheme). Section 14B and Para 32-A are relevant and read as follows:

> *"14B. Power to recover damages.- Where an employer makes default in the payment of any contribution to the Fund 2[, the Family 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 3[or sub- section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 4[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 5[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 6[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme]: 7[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 8[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.]*
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> *32A. (1) Where an employer makes default in the payment of any contribution to the 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 of the Act or in the payment of any charges payable under any other*

provisions of the Act or Scheme or under any of the conditions specified under section 17 of the Act, ***the Central Provident Fund Commissioner or such 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, damages at the rates given below****:-*

Period of default	*Rate of damages (% of arrears per annum)*
(a) Less than two months	*Five*
(b) Two months and above but less than four months	*Ten*
(c) Four months and above but less than six months	*Fifteen*
(d) Six months and above	*Twenty Five*

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored."

7. Learned counsel for the petitioner submits that the rates at which damages have been claimed by the respondent authorities are 17% per annum (for default of less than two months), 22% per annum (for default of two months and above but less than four months), 27% per annum (default of four months and above) and 37% per annum (default of six months and above). Learned counsel submits that in cases where the rates have not been specifically set out, it has transpired that the damages have been claimed at even higher rates. For instance, in the demand raised - which is impugned in W.P.(C.) No.6676/2010, the rate at which damages have been claimed amounts to 53% approximately.

8. Learned counsel for the petitioner submits that the said action of the respondent i.e. of claiming damages at rates even higher than those set out in para 32A of the Scheme, is in the teeth of the judgment of the Division Bench of this Court in ***Systems and Stamping and Another Vs. Employees' Provident Fund Appellate Tribunal & Others***, 2008 (2) LLJ 939. She submits that the Special Leave Petition preferred by the respondent department before the Supreme Court from the said judgment was dismissed on the ground of limitation, as well as on merits. Consequently, the same has attained finality. She submits that, in fact, the government has subsequently come out with the notification dated 26.09.2008 issued under Section 5 read with Section 7(1) and Section 14-B of the Act, thereby clarifying that the rates at which damages could, at most, be levied under Section 14-B of the Act are as set out in para 32A aforesaid.

9. It is, therefore, submitted that the levy of damages at rates even higher than those which could– at most be levied, in any event, cannot be sustained.

10. Learned counsel for the petitioner has next submitted that while passing the impugned orders under Section 14-B of the Act, the APFC has - in each of these cases, levied the maximum amount of damages without due consideration of the explanation sought to be furnished by the petitioner. The submission is that the exercise of jurisdiction by the APFC under Section 14B of the Act is a quasi judicial function, and the rates at which the damages could be levied as contained in the Table in para 32A of the Scheme, only stipulates the maximum rates at which the damages could be levied. The Authority concerned was not bound to levy damages at the rates contained in the table. Even if the petitioner's submission for leniency and

levy of lesser damages were to be rejected, the APFC were bound to record its reasons after due consideration of the facts of each of these cases. Her submission is that when orders are passed by quasi judicial authorities which entail serious pecuniary liabilities, there is an inherent obligation that the authority concerned should pass a reasoned and speaking order and deal with the submissions that the affected party may advance.

11. The next submission of learned counsel for the petitioner is that a meeting was held between the officers of the petitioner and the respondent authorities on 20.05.2002 at the highest level to discuss the provident fund issues of all regions. It was agreed that the outstanding dues of provident fund shall be deposited within 36 installments. Learned counsel submits that it was agreed that the respondent shall not take coercive action against the petitioner for recovery of the provident fund dues. According to the petitioner, the respondent had also agreed that they would consider the case for remission of damages in these circumstances. The petitioner has submitted that amounts were paid, though not in 36 installments, but gradually as per availability of funds. Learned counsel for the petitioner points out that the Meerut region of the respondent organization even passed an order under Section 14-B of the Act on 19.01.2009, wherein for the period June, 2000 to August, 2002, no damages were levied on the basis of the understanding and agreement reached between the parties in the meeting held on 20.05.2002. Learned counsel submits that the levy of damages is, therefore, contrary to the mutual understanding.

12. Learned counsel for the petitioner submits that some of the proceedings are highly belated. The notice under section 14B, which is

subject matter of W.P. (C) No.6676/2010, was issued pertaining to the periods from 1961 onwards. Learned counsel submits that the petitioner was set up in the year 1972 and it has no records available with it for the past period. She also submits that the petitioner is not liable for the dues outstanding before the year 1972 when the petitioner was set up.

13. Learned counsel for the petitioner has further submitted that in respect of the Moradabad region, the authorities have issued the notice and raised a demand in respect of the period July, 2000 to April, 2002 which is a subject matter of WP(C) No. 8971/2011. The liability under Section 7A as well as the interest payable under Section 7Q have been determined and the total amount claimed is Rs. 27,92,324/-. The same region has passed the order dated 12.10.2009 (assailed in WP(C) No. 5648/2010). The said order has been passed under Section 14-B and 7Q for the period October, 1968 to August, 2002. It is submitted that the element of interest computed under Section 7Q in the foregoing order i.e. dated 29.08.2002 has again been added in the later order dated 12.10.2009. She submits that the said element of interest cannot be charged twice over for the same period and this also shows the non-application of mind on the part of the authorities.

14. Learned counsel for the petitioner, however, clarifies that the demand raised under Section 7A of the Act, which is a part of the order dated 29.08.2002 (assailed in WP(C) No. 8971/2011), is not under challenge in the present proceedings.

15. Turning to the impugned order passed by the Appellate Tribunal, learned counsel for the petitioner submits that the Appellate Tribunal has

mechanically passed the impugned orders by recording facts and submissions which do not arise in the present case and which were never advanced before the Tribunal. It is submitted that the impugned orders passed by the Appellate Tribunal record that the petitioner's establishment became sick and that the petitioner's reference was pending before the BIFR. It is recorded that the petitioner applied for exemption, and claimed that the initiation of the proceedings case under Section 14B are barred by limitation. It is also recorded that the petitioner advanced the submission that after bifurcation of the State of Uttarakhand from the State of Uttar Pradesh, and consequent bifurcation of the UPSRTC, the Management of the Corporation in Uttarakhand State is liable to pay, and not the petitioner. Learned counsel for the petitioner submits that no such arguments could have been advanced, or were advanced by the petitioner in any of the appeals. If at all, the last of said arguments was available to the Uttarakhand Road Transport Corporation, since that Corporation was formed subsequently, and the formation of the Uttarakhand Road Transport Corporation could not have had a bearing on the liability of the petitioner, if any, under the Act. Learned counsel submits that the impugned orders passed by the Appellate Tribunal have been passed mechanically without consideration of the real issues raised and submissions advanced by the petitioner.

16. Learned counsel for the petitioner further submits that there is inconsistency in the orders passed by the Appellate Tribunal. Attention has been drawn to the order passed by the same Appellate Tribunal in ATA No. 18(14)2004 on 15.09.2010. In the said case, in respect of the petitioner, the

Appellate Tribunal had observed that the default in deposit of provident fund dues does not appear to be intentional, and imposition of damages at the higher rate does not appear to be proper. The Appellate Tribunal remanded that case to the EPF Authority with a direction to levy damages @ 25%, inclusive of interest.

17. Counsel for the petitioner in support of her submissions has placed reliance on the following decisions:

(i) ***Employees State Insurance Corporation Vs. H.M.T. Ltd. & Anr.*** AIR 2008 SC 1322;

(ii) ***M/s Hindustan Times Limited Vs. Union of India & Others*** 1998(2) SCC 242.

18. Mr. Chawla, who appears for the respondent authorities in WP(C) Nos. 6675/2010 and 6676/2010 has advanced his submissions on behalf of the respondent department. The submission of Mr. Chawla is that the petitioner is a habitual defaulter. He submits that the petitioner committed default rampantly in the deposit of provident fund dues from the time of its incorporation, and, prior to that the U.P. Roadways was equally casual in the matter of deposit of the provident fund dues. He submits that the result was that the respondent could not invest the funds that were due to be deposited in time, resulting in loss of income to the fund. Consequently, it is the interest of the workers which has suffered. Mr. Chawla submits that with each notice issued under Section 14-B, the respondent had sent to the petitioner the detailed computation of damages and interest, by indicating the periods for which the defaults had occurred. Therefore, to say that the

orders under Section 14-B are non speaking, is not correct. The petitioners have always been well aware of the basis on which the computations have been made while raising the demands.

19. Mr. Chawla submits that the petitioner being a government Corporation is expected to comply with the provisions of the law even more strictly than others. In support of his submissions, he placed reliance on the judgment of this Court in ***M/s Birla Cotton Spinning & Weaving Mills Ltd. Vs. Union of India & Others*** **ILR (1984) II 60.** Mr. Chawla submits that there is no power vested in the authorities to completely waive of damages as leviable under Section 14-B of the Act. The prescription of the rates at which damages may be levied under Section 14-B, as contained in the Table in para 32A of the Scheme, is to provide a guideline to the authorities concerned so that there is consistency in the matter of levy of damages, and there is no scope for arbitrariness in the matter of imposition of damages. Mr. Chawla has also placed reliance on the following judgments;

(i) ***Organo Chemical Industries and another Vs. Union of India and Others,*** *1979 Lab. I.C. 126;*

(ii) ***Maharashtra State Cooperative Bank Limited Vs. Assistant Provident Fund Commissioner and Others,*** (2009) 10 SCC 123.

20. He places reliance on ***India Tourism Development Corporation Ltd. Vs. Regional Provident Fund Commissioner*** (CWP No. 1100/1989), wherein this Court held that merely because the establishment is a government corporation is no reason why damages should not be levied in

the event of default in deposit of the provident fund dues by the employer.

21. In other matters, the submissions made by Mr. Chawala have been adopted by learned counsel for the respondent-Department.

22. Having heard learned counsel for the parties, perused the impugned orders and considered the several decisions cited before me, I am of the view that the impugned orders passed under Section 14-B and 7Q as well as the appellate orders passed by the Appellate Tribunal call for interference, as they are patently laconic and cannot be sustained. There is merit in the petitioner's submission that the damages imposed in each of these cases is in excess of even the maximum prescribed damages, as laid down in the table contained in para 32A of the Scheme. Apart from levying damages at more than the highest prescribed rates, the respondents have also demanded interest @ 12% per annum under Section 7Q. Consequently, the demands as raised by the respondents cannot be sustained on this short ground. It is also seen that in most of the cases, the rates at which damages have been levied have also not been explicitly indicated. There are no details/calculations to decipher as to on what amount, and for what period of delay damages have been levied. I may note that though learned counsel for the respondent has submitted that in all cases - along with the notices under Section 14-B, the detailed calculation was provided to the petitioner, the petitioner has disputed the said position. There is nothing placed on record in any of these cases to suggest that the notices issued under Section 14-B were accompanied by any such calculation. In any event, unless the said calculation is contained in the orders passed under Section 14-B, it would be practically impossible for the Appellate Tribunal to effectively deal with the

appeal, in case the employer/establishment approaches the Appellate Tribunal under Section 7-I of the Act to assail the demand raised under Section 14-B of the Act. The orders passed by the APFC under section 14B and 7Q of the Act being original orders, they should be self contained and reasoned, so that the right of appeal can be properly exercised and the Appellate Tribunal has the facility to appreciate the submissions of the parties in the light of the order assailed before it. By passing unreasoned and cryptic orders, the APFC has also rendered the right of appeal nugatory.

23. The Supreme Court in ***Employees State Insurance Corporation Ltd. Vs. HMT Ltd.*** (supra) was dealing with the aspect of interpretation and application of Section 85-B of the Employees State Insurance Act (for short, 'the ESI Act'). The Scheme contained in Section 85B of the ESI Act is *pari materia* with the Scheme contained in Section 14-B of the Act. Like under the Act, so also under the ESI Act, the employer is obliged to regularly make deposits with the ESIC to insure the workmen. The only difference is that under the Act, when the employer makes the deposit, the said deposit has two components, namely, the employees' contribution and the employers contribution, however, the deposit made under the ESI Act is only the employers contribution. The Supreme Court examined Section 85B of the ESI Act which, like Section 14-B of the Act uses the expression "may recover" in respect of damages for default in making payment of the amounts due under the ESI Act. The Supreme Court cited several earlier decisions, including those rendered while considering section 14B of the Act, and concluded that the 'imposition' of penalty under section 85B of the ESI Act is not a mechanical exercise to be undertaken by the Authority

concerned. The imposition of penalty at the prescribed rates is not imperative. Proceedings under section 85B and section 14B of the Act are quasi judicial proceedings, wherein the authority has to apply its mind to the facts of the case and the reply to the show cause notice and to pass a reasoned order after following the principles of natural justice. Several factors go into the determination of the issue of quantification of penalty, such as the period of delay, number of defaults, frequency of default, amount involved etc. In certain situations, the party may be entitled to claim benefit of irretrievable prejudice. The Supreme Court held that penalty provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that the penalty must be levied in all situations. When discretionary jurisdiction is vested in the authority to levy penal damages, the same could not be construed as imperative. Even where the regulations have been prescribed, general guidelines and upper limits for imposition of damages, it could not be said that in no case mitigating circumstances can be taken into consideration by the adjudicating authority. The authority should indicate the reasons rejecting the justification for delay. The authority should also indicate as to why imposition of damages at the rates specified in the order was required to be made. The Supreme Court in this decision observed as follows:

> ***14.*** *Section 85-B of the Act uses the words "may recover". Levy of damages thereunder is by way of penalty. The legislature limited the jurisdiction of the authority to levy penalty i.e. not exceeding the amount of arrears. Regulation 31-C of the Regulations, therefore, in our opinion, must be*

construed keeping in view the language used in the legislative Act and not dehors the same.

> ***15.*** *Our attention, however, has been drawn to a decision of this Court in Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242 wherein it has been laid down:*
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> > *"From the aforesaid decisions, the following principles can be summarized:*
> >
> > ***The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14-B****."*
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> ***16.*** *It was, however, opined that* ***in certain situations, the employer can claim the benefit of "irretrievable prejudice" in case a demand for damages is made after several years. In that case, this Court was concerned, inter alia, with a question in regard to the effect of levy of damages after a long time****. The question which, inter alia, arose for consideration therein was as to whether suo motu revisional jurisdiction could be exercised by the revisional authority at any time it desires. The Court*

made a distinction between the cases involving "recovery of money" from an employer who had withheld the contributions made by the workmen in trust and other cases. It was in that situation the Court opined supra. We are not concerned with such a situation herein.

17. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative*. Even otherwise, an endeavour should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.*

18. *In Prestolite (India) Ltd. v. Regional Director [1994 Supp (3) SCC 690 : 1995 SCC (L&S) 202] this Court rejected a contention raised by the Regional Director of Employees' Insurance that under the Employees' State Insurance General Regulations guidelines have been indicated showing as to how damages for delayed payment are to be imposed and since such guidelines have been followed, no exception should be taken thereto made to the impugned adjudication, stating:*

> *"****5. … Even if the regulations have prescribed general guidelines and the upper limits at which the imposition of damages can be made, it cannot be contended that in no case, the mitigating circumstances can be taken into consideration by the adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the uppermost limit of the table****. In the instant*

case, ***it appears to us that the order has been passed without indicating any reason whatsoever as to why grounds for delayed payment were not to be accepted. There is no indication as to why the imposition of damages at the rate specified in the order was required to be made****. Simply because the appellant did not appear in person and produce materials to support the objections, the employee's case could not be discarded in limine. On the contrary, the objection ought to have been considered on merits."*

19. *In Dilip N. Shroff v. CIT [(2007) 6 SCC 329] this Court stated: (SCC p. 353, para 40)*

> *"40. Thus, it appears that there is distinct line of authorities which clearly lays down that in considering a question of penalty, means rea is not a relevant consideration. Even assuming that when the statute says that one is liable for penalty if one furnishes inaccurate particulars, it may or may not by itself be held to be enough if the particulars furnished are found to be inaccurate is anything more needed but the question would still be as to whether reliance placed on some valuation of an approved valuer and, therefore, the furnishing of inaccurate particulars was not deliberate, meaning thereby that an element of mens rea is needed before penalty can be imposed, would have received serious consideration in the light of a large number of decisions of this Court."*

20. *We agree with the said view as also for the additional reason that the subordinate legislation cannot override the principal legislative provisions.*

> ***The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.***
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> ***21. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof.****"* (emphasis supplied)

24. A perusal of the impugned orders passed under Section 14-B and by the Appellate Tribunal shows complete non-consideration by the APFC as well as the Appellate Tribunal of the several aspects which needed to go into consideration before levy of damages as specified in the orders under Section 14-B of the Act, and rejection of the appeals. It is clear that the APFC has mechanically purported to impose the damages at the highest permissible rates, and at rates even higher than those permissible. The submission of the petitioner with regard to the reasons for its default in deposit of the provident fund dues has not been considered at all. This Court may not be taken to have found merit, or otherwise, in the petitioner's submission with regard to the reasons for said defaults. However, it was essential for the authorities concerned to have, at least, addressed themselves to those aspects and to have dealt with the same in the orders passed by

them. The imposition of maximum damages as per the rates provided in the table contained in para 32A of the Scheme is not mandatory. The same is merely a guideline. The said guideline cannot be breached by imposition of higher damages, as done in the present cases. Since the said table contained the upper limit of damages which may be imposed in a given case, the issue whether lesser damages were called for in these, or any of these cases needed consideration by application of the principles laid down by the Supreme Court in ***HMT Ltd. case*** (supra). The APFC has, however, abdicated its jurisdiction by mechanically passing the orders in each of these cases. It is clear that these orders suffer from non application of mind and the APFC, which acts as a quasi judicial authority while passing orders under Section 14-B of the Act, has failed to disclose application of mind to the relevant aspects which arose in these cases.

25. The submission of the petitioner that in two cases, the notices have been issued after long periods of delay also needs consideration. The demand raised by the respondent which is under challenge in WP(C) No. 5648/2010 pertains to the default claimed to have been committed in deposit of the provident fund dues during the period October, 1968 to August, 2002. Similarly, the demand raised under Section 14-B which is under challenge in WP(C) No. 6676/2010, pertains to the default alleged to have been committed in deposit of provident fund dues during the period May, 1961 to February, 1999. Whereas the first case deals with Moradabad region, the second pertains to Bareilly region. The submission of the petitioner is that it did not even exist during the major portion of the period covered by the proceedings undertaken by the notices/orders in these cases.

The petitioner came into existence only in the year 1972. The case of the petitioner is that the concerned officer, who may have dealt with the aspect of deposit of provident fund dues was no longer there in the organization.

26. No doubt, from the documents filed with these two writ petitions, i.e., WP(C) Nos. 5648/2010 and 6676/2010, it cannot be ascertained whether, or not, the petitioner had taken a ground of being prejudiced on account of the record not being available. However, the fact remains that the petitioner organization came into existence only in the year 1972, whereas the periods covered by the proceedings assailed in these two writ petitions pertain to the period October, 1968 onwards and May, 1961 onwards respectively. The Supreme Court in ***Hindustan Times Ltd. Vs. UOI*** (supra) while holding that there is no period of limitation prescribed for recovery of damages under Section 14-B of the Act, held that the defence of irretrievable prejudice on account of delay in initiation of proceedings under Section 14-B of the Act should be taken in the reply to the show cause notice, and the establishment must satisfy the concerned authority the prejudice that the said delay has caused to the establishment in the matter of defending the proceedings. Therefore, if the petitioner has taken a plea of its suffering irretrievable prejudice on account of the patent delay in initiation of proceedings under section 14B of the Act , which are subject matter of W.P.(C.) No.5648/2010 and 6676/2010, the same deserves consideration by a speaking order.

27. I also find merit in the submission of learned counsel for the petitioner that the Appellate Tribunal, in each of these cases, has passed the impugned orders mechanically, without due application of mind to the submission of the petitioner. Irrelevant aspects have gone into consideration while passing

the impugned appellate orders. It is not understood as to how the Appellate Tribunal could have recorded submissions which did not arise, and were not advanced by the petitioner. The petitioner is not a BIFR company. Yet the Appellate Tribunal recorded that the appellant i.e. the petitioner claimed that it was a company whose reference was pending before the BIFR. The submission which could, and may have been advanced by the Uttarakhand Road Transport Corporation, has been recorded in the orders passed on the appeals preferred by the petitioner. The said submission has no meaning so far as the appeals of the petitioner were concerned.

28. For the aforesaid reasons, I allow these writ petitions and quash the impugned orders passed under Section 14-B and appellate orders in each of these cases. The matter is remanded back to the Assistant Provident Fund Commissioners concerned for re-adjudication of the show cause notices issued to the petitioner under Section 14-B of the Act. The APFC concerned shall provide to the petitioner the basis on which it propose to raise the demand under Section 14-B and charge interest under Section 7Q. The submissions that the petitioner may advance shall also be considered and reasoned orders shall be passed by the APFC concerned dealing with the pleas of the petitioner. In case the petitioner is aggrieved and prefers further appeals before the Appellate Tribunal, the Appellate Tribunal shall also consider the submissions that the petitioner may advance in its appeals and pass reasoned orders after duly considering the same. Needless to state that the APFC and the Appellate Tribunal shall be guided by the relevant rulings applicable in the facts of each case.

29. The petitions stand disposed of in the aforesaid terms leaving the

parties to bear their own costs.

30. The amount deposited by the petitioner in pursuance of the orders passed under Section 14-B and 7Q shall continue to remain in deposit with the respondent, and the final appropriation of the same shall abide by the further orders that may be passed.

VIPIN SANGHI, J.

MAY 24, 2013