



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Friday the 30th day of July, 2021)

APPEAL No.323/2018

Appellant

M/s General Engineering Company,
(Kiran Steel Industries),
Industrial Estate,
Kannanalloor P O
Kollam

By : Adv. B. Mohan Lal

Respondent

The Assistant PFC Commissioner
EPFO,
Kollam 691 001

By : Adv. Pirappancode V.S. Sudheer
& Adv. Megha.A

This case coming up for final hearing on 20.04.2021 and this Tribunal-cum-Labour Court on 30.07.2021 passed the following:

ORDER

Present appeal is filed from order KR/KLM/12913/PD/2018-19/483 dated 18th September 2018 assessing damages U/s 14B of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from

7/1991 to 04/2009. The total damages assessed Rs.12,71,663/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant was running an engineering workshop and was remitting contribution regularly and properly. The respondent issued a notice dt. 28.03.2014 alleging that there was delay in deposit of PF dues for the period from 7/1991 to 4/2009 and directed the appellant to show cause why damages shall not be levied for belated remittance of contribution. The respondent issued notices on 22.04.2014, 04.07.2018 and 19.07.2018. The respondent on verification found that the contributions were paid through bulk remittance against Section 7A assessment. Accordingly the respondent issued a revised calculation to the appellant on 18.5.2017. The appellant appeared before the respondent and submit a letter stating that the delay in depositing the contribution was due to various litigations pending before the Hon'ble High Court of Kerala and as well as before the section 7A authority. The appellant cleared the dues by instalment sanctioned by the respondent. The delay in depositing dues was not intentional but due to acute financial crisis. The appellant also brought to the notice of the respondent the decision rendered by

Hon'ble High Court of Kerala in **Regional Provident Fund Commissioner Vs. Harrison Malayalam Limited**, 2013 ILR 833.

The claim of interest U/s 7Q of the Act w.e.f.07/1991 onwards is not legal. Section 7Q notification came into force only w.e.f. 1995. The respondent rejected the contention and assessed interest U/s 7Q for the period 07/1991 to 04/2009. Due to acute financial crisis there was delay in payment of salary and statutory payment of the workers for every month. The delay was due to reasons beyond the control of the appellant. There was no deliberate act or wilful defiance of law from the side of the appellant in belated remittance of contribution. Section 14B of the Act as it stands now is penal in nature and the respondent ought to have followed the decision of the Hon'ble Supreme Court in **Hindustan Steel Limited Vs State of Orissa**, AIR 1970 SC 253. The respondent failed to notice that there was delay in remittance of contribution due to financial difficulty of the appellant. The proceedings U/s 14B is initiated after a lapse of more than 3 years, and hence the initiation of the proceedings is barred by limitation. The respondent without giving sufficient opportunity and fair hearing entered into perverse findings against the appellant. The appellant is totally in dark about the calculation figured in the impugned order. There is

no findings in the impugned order that the appellant wilfully and deliberately delayed the payments. The respondent has imposed damages in a mechanical way without considering any of the extenuating circumstances. The Hon'ble High Court of Kerala in **Harrisons Malayalam Limited Vs. Regional Provident Fund Commissioner** 2012 (1) KHC 243 held that merely because there is delay in payment of contribution, liability to pay damages does not arise automatically, but the same shall be decided by applying mind objectively to the merit of each case.

3. The respondent filed counter denying the above allegations. Admittedly there was delay in remittance of contribution by the appellant establishment for the period from 7/1991 to 4/2009. A notice dt. 28.3.2014 was issued to the appellant to show cause why damages as stipulated U/s 14B shall not be recovered from the appellant. A detailed statement showing due date, belated payment date, month wise dues, and period of delay was forward to the appellant and was also given an opportunity for personal hearing on 22.4.2014. There was no representation on behalf of the appellant on the said date. During the enquiry it was noticed that the appellant remitted the contribution assessed U/s 7A in instalments. Hence a revised

statement showing amounts payable U/s 14B and 7Q was sent along with the adjournment notice dt.18.05.2017 with a direction to attend hearing on 13.6.2017. The proprietor of the appellant establishment appeared on 13.6.2017 and requested time. Accordingly the case was posted to 18.7.2017. On 18.7.2017 there was no representation on the part on the appellant. Another notice was issued to the appellant directing him to appear before respondent on 4.7.2018 but there was no representation on the part of the appellant and therefore matter was adjourned to 19.7.2018 and 4.9.2018. On 4.9.2018 the appellant attend the hearing and filed a written statement stating that he does not have any resource to remit the damages and interest. After considering the representation given by the appellant the respondent issued the impugned order.

4. There is no provision in Section 7I of the Act for filing an appeal against order issued U/s 7Q of the Act.

5. It is settled position of law that financial difficulties cannot be taken as a ground for delaying in PF contribution. In **Hindustan Times Limited Vs. Union of India**, 1998 (2)SCC 243 the Hon'ble Supreme Court held that financial problems is not a relevant consideration to avoid liability of payment of provident

fund dues. In **Elsons Cotton Mills V RPFC**, 2001 (1) SCT 1104 (P&H)(DB), Division Bench of High Court of Punjab and Haryana rejected financial difficulties as a ground for delay in payment PF contribution. In **M/s Sky Machinery Ltd v. RPFC**, 1998 LLR 925, the Hon'ble High Court of Orissa held that financial crunch will not be a sufficient ground for waving of penal damages for delay in depositing the PF contribution. The damages collected is utilised for augmenting the fund constituted under the provision of the Act. The interest generated is also utilised for declaring higher rate of the pension benefits of the employees. Sec 14B is indeed a punity measure to thwart and deter the employers from future default.

6. There is no dispute regarding fact that there was delay in remittance of contribution by the appellant. The respondent therefore initiated action for assessing damages and interest for the delayed remittance of contribution. According to the learned Counsel for the respondent, the notice along with a delay statement was forwarded to the appellant. The delay statement contained the amount remitted, the due date of payment, actual date of payment and the delay involved in the remittance. During the course of the enquiry, the respondent noticed that the appellant paid lumpsum amount in instalments on the basis of an assessment order issue

U/s 7A of the Act. Accordingly the delay statement was revised and sent to the appellant along with the summons for the next date of posting. The appellant was also given five opportunities to represent their case, produce documents, if any and also point out any difference in the delay statement. The appellant filed a written statement on 4.9.2018 stating that the delay in remittance was due to financial difficulties. However the appellant failed to produce any evidence to substantiate the claim of financial difficulties. It can be seen from the procedure adopted by the respondent that the respondent authority complied with the requirements of natural justice. The next issue is with regard to quantum of damages assessed by the respondent. It was pleaded by the learned Counsel for the appellant that the delay in remittance was due to the pending litigation before the 7A authority as well as before Hon'ble High Court of Kerala. However the details of the litigation were not furnished by the appellant establishment. Further it is seen that the appellant failed to remit the contribution from the date of coverage and therefore the respondent initiated enquiry U/s 7A of the Act to quantify the dues. After assessment of dues, appellant remitted the contribution in instalments which further delayed the remittance of contribution. Though the appellant pleaded financial

difficulty as a ground for delayed remittance of contribution, no evidence is produced before the respondent authority as well as in this appeal. The learned Counsel for the appellant relied the decision of the Division Bench of the Hon'ble High Court of Kerala in **RPFC V Harrison Malayalam**, (supra) to argue that an establishment which is already in financial difficulty cannot be again burdened with maximum damages. The learned Counsel for the respondent pointed out that the Hon'ble Supreme Court of India uphold the assessment of damages in **Harrison Malayalam** case modified the same to extend that the question of law involved in the above case is kept open to be decided in an appropriate case in SLP(C)21174/2015. It was also pointed out that the appellant establishment was covered w.e.f July 1991 and the appellant was liable to remit the contribution from the said date. It is a case of the respondent that the appellant recovered the employees' share of contribution from the salary of the employees but failed to remit the same with the respondent in time. Non deposit of the employees' share of PF contribution deducted from the salary of the employees is an offence of breach of trust U/s 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea or intentional

delay in remittance of contribution. The delay in remittance is so huge that the contribution due on July 1991 was remitted by the appellant only in instalments from 1.2.2012. The liability U/s 14B cannot be avoided by stating that the delay was due to pending litigation and also due to financial difficulties. The appellant ought to have proved financial difficulty by producing supporting evidence before the respondent authority. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B, if the appellant pleads and produces documents to substantiate the same. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Having failed to substantiate the claim of financial

difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

7. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **M/s ISD Engineering School Vs EPFO**, W.P.(C) no.5640/2015(D) and also in **St. Marys Convent School Vs APFC**, W.P.(C) no.28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable. However if the appellant has any dispute regarding assessment of interest issued U/s 7Q, he may approach the respondent authority. The learned Counsel for the respondent however submitted that the appellant has already remitted the interest U/s 7Q of the Act.

8. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer