



सत्यमेव जयते

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

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

(Monday the 20th day of September, 2021)

APPEAL No.541/2019

Old No. ATA 639(7)2010

Appellant

M/s Vishnu Cashew Company
Pallisserikkal, Sasthamcotta
Kunnathoor, Kollam - 690 540

Adv. Anil Narayanan

Respondent

The Assistant PF Commissioner
EPFO, Mannannia Complex
Chinnakkada, Kollam 691 001

Adv. PirappancodeV.S.Sudheer
Adv. Akash S & Adv. Megha.A

This case coming up for final hearing on 14.09.2021 and this Tribunal-cum-Labour Court on 20.09.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/16649/KLM/PD/02/1649A dated 05/05/2009 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

03/2003 to 01/2007. The total damages assessed Rs.40, 977/-.

The impugned order is a composite order including the demand of interest U/s 7Q of the Act for the same period.

2. The appellant is a cashew processing company. The appellant establishment was regular in compliance except for a few months when there was delay. Due to severe financial difficulties even the monthly salary payments were delayed for several months. Accordingly there was delay in remittance of contribution also. The cashew processing is a seasonal business depending on the availability of raw cashew. The delay in remittance of contribution was due to reasons beyond the control of the appellant management. There was no deliberate Act or defiance of law on the side of the appellant. There was no contumacious and dishonest conduct on the side of the appellant. The respondent failed to exercise his discretion available under Section 14B of the Act and Para 32A of EPF scheme. The respondent failed to consider whether was any wilful delay in remittance of contribution. As per Section 14B of the Act, as it's stands now, is purely punitive in nature. The Hon'ble Supreme Court of India in **M/s Hindustan Steel Ltd Vs the State of Orissa**, AIR 1970 SC 253, held that penalty will

not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligations.

3. The respondent filed counter denying the above allegations. The appellant establishment was brought under the coverage of the Act w.e.f. 16.04.1998. It is an admitted fact that there was delay in remittance of contribution for the period from 03/2003 to 01/2007. Any belated remittance of contribution under the Act will attract damages U/s 14B of the Act read with Para 32A of the EPF scheme. Hence a notice dt. 27.02.2009 was issued to the appellant to show cause why damages U/s 14B of the Act shall not be levied for the delayed remittance of contribution. A copy of the notice along with the acknowledgement card is produced and marked as Exbt.R1 and R2 respectively. A detailed statement showing the due date of payment, the actual date of payment and delay in remittance was also communicated along with the notice. The appellant was also given an opportunity for personal hearing on 06.03.2019. There was no representation or request for adjournment from the appellant on the date of hearing.

4. Taking into account the evidence available on record, the respondent authority concluded the enquiry and issued impugned order assessing the damages. The assessment of interest U/s 7Q is not appealable as there is no provision U/s 7(I) to file an appeal against an order issued U/s 7Q of the act.

5. The appellant is a chronic defaulter. Action U/s 14B has already been taken against the appellant for belated remittance of contribution of the period 04/2001 to 12/2001 from 04/2009 to 06/2009 and 10/2009, prior to the present proceedings. It is the statutory duty of the appellant to comply with the provisions within the time limit provided under the Act. The financial difficulty pleaded by the appellant is not a justifiable ground for delay in remittance of contribution. In **M/s Sky Machinery Limited Vs RPFC**, 1998 LLR, 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient ground for waiving penal damages for delay in depositing the PF contribution. In **Hindustan Times Limited V/s Union of India**, 1998 (2) SCC 242 the Hon'ble Supreme Court also took the view that financial difficulty cannot be a ground for escaping the liability under the provision of the Act. The claim of the appellant that they could not attend the

scheduled enquiry on 06.03.2009 because of his illness is not correct. In his letter dt. 18.03.2009, in response to the notice dt. 27.02.2009, he had never disclosed his claim of illness. Further the appellant had made a false claim in the letter dt. 18.03.2009 that he received the notice only on 06.03.2009 whereas he had received the same on 04.03.2009 as evident from acknowledgment card, Exbt.R2 produced in this appeal. A copy of the letter dt. 18.03.2009 is produced and marked as Exbt.R3. The claim of the appellant that the respondent failed to produce detailed calculation of damages is not correct. In Exbt.R1 a detailed calculation regarding the proposed damages was already sent and received by the appellant. The claim of the appellant that the appellant establishment is an educational institution run by a charitable trust is also not correct. Section 14B of the Act was inserted with an object to act as a deterrent measure on the employers to prevent them from violating their statutory obligation. The main object of the provision is to penalize the employer so that the employers may be thwarted or deterred from making any further defaults.

6. There is no dispute regarding the fact that there was delay in remittance of contribution during the relevant point of

time. Though there was a pleading that there was delay in payment of wages to the employees, the same is not substantiated by the appellant. The only ground pleaded is that of financial difficulty for belated remittance of contribution. However the appellant failed to produce any documents to substantiate the same before the respondent. In **M/s. KeePharma 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 also 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 authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. In the absence of any supporting evidence to substantiate the claim of financial

difficulty, it is not possible to accept the pleading of financial difficulty as a reason for belated remittance of contribution. The learned counsel for the respondent also pointed out that having failed to prove the delay in payment of wages, it can only be presumed that the wages were paid in time. When the wages are paid to the employees, the employees' share of contribution is deducted from the salary of employees. The non remittance of employees' contribution deducted from the salary of the employees is an offence U/s 405/406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution at least to the extent of 50% of the total contribution.

7. The learned Counsel for the respondent pointed out that there is no provisions 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, WP(C) no.5640/2015(D) and also in **St. Marys Convent School Vs APFC**, WP(C) No.28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable. However, the impugned order being a composite order, there is no legal infirmity in challenging the same.

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