



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.
(Wednesday, the 27th day of October 2021)

APPEAL No. 167/2019

Old No. ATA 339 (7) 2015

Appellant

M/s. Karapara Estate Ltd
Padagiri, Nellyampathy
Palakkad – 678 509

By Adv. Pallichal SK Pramod

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
Eranhipalam
Kozhikode – 673 006

By Adv. M Gireesh Kumar

This case coming up for final hearing on 26.07.2021
and this Tribunal-cum-Labour Court on 27.10.2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KKD/
0000497000 / ENF - 4(1) / 14B / 2014 – 2015 / 11333 dated
23.01.2015 assessing damages under Sec 14B of EPF and MP

Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the months 04/2004 – 03/2006. Total damages assessed is Rs. 87,411/-. The interest demanded under Sec 7Q of the Act is also being challenged in this appeal.

2. The appellant is a coffee and cardamom plantation. The respondent authority initiated action for assessing damages and interest for belated remittance of contribution for a period from April 2004 to March 2006. The respondent issued a notice dated 19.09.2006 to show cause why damages as envisaged under Sec 14B of the Act should not be levied and recovered. The respondent appeared and filed a written statement ignoring the contentions. The respondent issued orders assessing damages and interests vide final orders dated 06.11.2006. The appellant preferred appeal before EPF appellant tribunal as appeal No. ATA 44(7)/2007. The said appeal was dismissed by EPF appellant tribunal vide order dated 08.03.2010. The appellant preferred writ petition No.17136/2010 before the Hon'ble High Court of Kerala. The Hon'ble High Court allowed the writ petition as per judgement

dated 26.08.2014 and the matter was remitted back to the respondent for fresh consideration with a specific direction to consider whether there was any deliberate inaction or contumacious conduct on the part of the appellant in belated remittance of contribution. A copy of judgement dated 26.08.2014 is produced and marked as Annexure A1. The respondent initiated fresh proceedings. The managing partner of the appellant appeared before the respondent authority and filed written statement requesting for waiver of damages. A copy of the said written statement is produced and marked as Annexure A2. Ignoring the contentions of the appellant, the respondent issued the impugned orders. The respondent failed to consider that there was no inordinate delay in remitting the contribution and the delay was only due to the financial problem of the appellant. The respondent authority failed to consider the matter as per the direction of the Hon'ble High Court of Kerala. There is no finding in the impugned order that the delay was due to any deliberate inaction on the part of the appellant. The appellant produced the audit report under the Agricultural Income Tax Act for the period 2004 - 2005 which establishes huge loss to the

appellant establishment. The appellant establishment is in continuous loss from the year 2000 which lead to the delay in remittance of contribution for the period from 04/2004 – 03/2006.

3. The respondent filed counter denying the above allegations. Appellant establishment is covered under the provisions of the act w.e.f. 30.04.1957. The appellant committed default in remittance of contribution. Since there was delay in remittance of contribution, a show cause notice under Sec 14B was issued to the appellant. He was also given an opportunity for personnel hearing on 10.10.2006. A detailed delay statement was also forwarded to him along with the notice. The appellant did not avail the opportunity of personnel hearing and therefore the respondent issued the final order on 06.11.2006. The appeal filed before the EPF Appellant Tribunal was dismissed. The appellant approached the Hon'ble High Court of Kerala in WP(C) No.17136/2010. The writ petition was allowed and the matter was remitted back to the respondent vide judgment dated 26.08.2014. The respondent authority issued fresh notice dated 29.10.2014

providing an opportunity for personnel hearing on 05.11.2014. On the request of the appellant, the enquiry was adjourned to 10.11.2014 and further adjourned to 08.12.2014. On 08.12.2014, a representative of the appellant attended the hearing and filed a written statement. The representative also pointed out that the delay in remittance of provident fund contribution during 2004-2005 and 2005-2006 was due to financial constraints of the appellant. Other than the delay for two years, the appellant establishment was regular in compliance for the last 20 years. Financial constraints are not a ground for delayed remittance of contribution and therefore the damages and interest cannot be waived on that ground. The representative who attended the hearing before the 14B authority also pleaded that the delay in remittance was due to the fact that the Managing Partner of the appellant establishment was not aware of the seriousness of delayed payment of contribution. Financial difficulty or personal inconvenience cannot be pleaded as a ground for delayed remittance of contribution. In ***Calicut Modern Spinning & Weaving Mills Ltd. Vs Regional Provident Fund Commissioner*** 1981(1) LLJ 440 the Hon'ble

High Court of Kerala held that in view of the statutory provisions, the financial difficulty cannot be a ground for delayed remittance of contribution. Damages under Sec 14B is, in substance a penalty imposed on the appellant for breach of the statutory obligations.

4. The interest demanded under Sec 7Q cannot be challenged in an appeal under Sec 7(I) of the Act.

5. Admittedly there was delay in remittance of provident fund contribution for the period from 04/2004 – 03/2006. In the first round of litigation, the appellant did not attend the 14B proceedings which ended up in the assessment of damages and interests. The appeal filed before the EPF Appellant Tribunal was dismissed. The appellant approached Hon'ble High Court of Kerala in Writ Petition (C) No.17136/ 2010. The Hon'ble High Court vide its judgement dated 26.08.2014 held that the financial constraints will have to be considered as a mitigating circumstances citing the decision of the Hon'ble High Court in ***Sreekamakshy Agency (P) Ltd Vs EPF Appellant Tribunal and another*** 2013(1) KHC 457. Accordingly the matter was remitted back to the

respondent authority. The respondent authority initiated fresh proceedings. The appellant attended the hearing and filed a written statement which is produced as Annexure A2 in this appeal. As per the representation, the appellant management is running the plantation for the last 20 years. The estate is in continuous loss from the year 2000. There is continuous litigation with State Government regarding the ownership of plantation which is still going on. The appellant also pointed out that the appellant establishment was regular in compliance all these 20 years except for the year 2004-2005 and 2005-2006. It was also pointed out that during the above two years, there was delay because of the misunderstanding of one of the partners regarding the seriousness of delayed remittance of provident fund contribution. It was specifically pleaded that the appellant establishment was in loss during 2004-2005 to the tune of Rs.16,48,345.96/- and 2005-2006 16,49,855.07/-. The appellant also produced the Agricultural Income Tax Assessment Orders evidencing the loss sustained by them during the relevant period. The respondent authority failed to consider the directions of Hon'ble High Court of Kerala and

also the evidence produced by the appellant to show that the appellant establishment was under loss during relevant period of time. It is a consistent view of the Hon'ble High Court of Kerala that financial constraint is a mitigating circumstance while levying damages under Sec 14B of the Act. The only requirement is that the employers will have to plead that as a ground and produce evidence substantiating the same. Though the appellant produced evidence to show that the appellant establishment was under heavy loss during the relevant period of time, the respondent authority ignored the same. The learned Counsel for the respondent argued that the appellant has no case that salary of the employees were not paid during the relevant point of time. When the salary of the employees are paid, the employee's share of provident fund contribution is deducted from the salary of the employees. The appellant even delayed remittance of employee's share of contribution deducted from the salary of the employees. The delay in remitting the employees share of contribution deducted from the salary of the employee is an offence of breach of trust. Having committed an offence of breach of trust, the appellant cannot plead that there was no

intentional delay or mensrea in delayed remittance of employee's share of contribution deducted from the salary of the employees, which accounts for 50% of the total contribution.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed under Sec 14B of the Act.

7. The learned Counsel for the appellant in the written argument filed by him stated that the interest demanded under Sec 7Q of the Act had already been remitted. Even otherwise, an appeal from 7Q order is not maintainable as there is no provision under Sec 7(I) to file an appeal from an order issued under Sec 7Q.

8. On perusal of Sec 7(I) of the Act, it is seen that there is no provision under Sec 7(I) to challenge an order issued under Sec 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 under Sec 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. Mary's Convent School Vs APFC***, W.P.(C) No.28924/2016 (M) held that the order issued under Sec 7Q of the Act is not appealable.

9. Hence the appeal against Sec 14B order is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages. Appeal against Sec 7Q assessment is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer