



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the, 31st day of March 2022)

APPEAL No. 172/2019
(Old No. ATA.155(7)2015)

Appellant : M/s. C.K.Kurian & Company
Near Guest House
Broadway
Ernakulam – 682 011

By M/s. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan
Kaloor, Kochi – 682 017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 08.02.2021 and this Tribunal-cum-Labour Court on 31.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KCH/27969/DAMAGES CELL/2014/7553 dated 20.10.2014 assessing damages under Section 14B of EPF and MP Act 1952

(hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 04/2009 – 12/2013. The total damages assessed is Rs. 4,43,809/- (Rupees Four lakh forty three thousand eight hundred and nine only)

2. The appellant is a partnership firm engaged in the business of selling optical lenses and frames. The family members of the partners are also in the same line of business. Their establishments are known as Kurian Opticals, Kurian Opticians and Kurian Vision Care. All these establishments are having 18 shops spread over in Thrissur, Kottayam and Ernakulam Districts. The appellant volunteered to extend social security benefits to all its employees w.e.f. 2012. The individual units are not coverable under the provisions of the Act since none of the units were employing more than 19 employees. However the Enforcement Officer recommended coverage w.e.f. 01.04.2009. The appellant did not deduct any contribution from the employees from 01.04.2009. A common code number was allotted and the appellant was directed to remit an amount of Rs 33,99,935/- as contribution from 04/2009 – 12/2013. The respondent also assessed interest of

Rs.2,48,215/- . The appellant remitted the said amount also. The respondent thereafter initiated action for assessing damages. The appellant appeared and requested for waiver of damages. Ignoring the contentions of the appellant, the respondent issued the impugned order assessing damages, a copy of which is produced and marked as Annexure A. The respondent authority failed to exercise its discretion available under Sec 14B of the Act and under Para 32A of EPF Scheme. In ***Regional Provident Fund Commissioner Vs S.D. College Hoshiarpur***, 1997 (2) LLJ 55, the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. The delay in remitting contribution was not intentional but for reasons beyond the control of the appellant. In ***Indian Telephone Industries Ltd Vs APFC***, 2006 (3) KLJ 698, the Hon'ble High Court of Kerala held that unless there is a finding by the authority that the employer is guilty of contumacious conduct or has acted deliberately, dishonestly and in utter disregard of statutory obligations, penal damages

cannot be imposed. Since there is no mensrea on the part of the appellant, damages is not liable to levied.

3. The respondent filed counter denying the above allegations. The appellant is having several branches spread all over Kerala and therefore the appellant establishment is covered under Sec 1(3)(b) from 01.04.2009 along with all branches. There was delay in remittance of contribution and therefore the appellant is liable to remit damages under Sec 14B and interest under Sec 7Q of the Act. The respondent therefore initiated action vide notice dated 07.04.2014. A month wise detailed delay statement was also forwarded along with the notice. A copy of the notice is produced and marked as Exhibit R1. The appellant was also given an opportunity for personnel hearing on 29.05.2014. The representatives of the appellant attended the hearing. No written statement was filed and no documents were produced before the respondent authority. No dispute was also raised regarding the Exhibit R1 delay statement. They requested only instalment facility to remit the damages. None of the contentions raised in this appeal by the appellant were raised before the respondent

authority at the time of Sec 14B enquiry. The grounds not taken before the respondent authority cannot be taken for the first time in this appeal. The appellant cannot ignore the statutory liability cast upon the appellant under Para 30 and 38 of EPF Scheme to remit the monthly contribution payable within 15 days of close of every month. The judgement of the Hon'ble High Court of Kerala in **Telephone Industries Vs APFC** is modified by the Division Bench of the Hon'ble High Court of Kerala in Writ Appeal No. 2182/2006. The Hon'ble Division Bench clarified that the order passed by the learned Single Judge is not sustainable for the reason that the declaratory relief granted by the learned Single Judge is impermissible in law. The representative who attended the hearing only requested for instalment facility to remit the damages. In **Chairman SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, the Hon'ble Supreme Court held that imposition of penalty becomes a sine qua non of the violation and no excuse from the employer can be entertained in civil liability cases. According to the High Court, mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The appellant establishment was covered along with its all branch units retrospectively w.e.f. 01.04.2009 in 2013. According to the learned Counsel for the appellant, the employee's share of contribution for the retrospective period was not deducted from the salary of the employee and therefore the appellant was forced to remit the employees share of contribution also. Since there was delay in remittance of contribution, the respondent initiated action for assessing damages under Sec 14B of the Act. The representative of the appellant who attended the hearing admitted the delay and requested for waiver of damages in the special circumstance of this case. They also requested for instalment facility to remit the contribution. Ignoring the contentions of the appellant, respondent issued the impugned order.

5. In this appeal the learned Counsel for the appellant pointed out that there was no intentional delay as the appellant establishment was clubbed and covered retrospectively. The learned Counsel also argued that there was no mensrea in belated remittance of contribution. The respondent did not dispute the fact that the appellant establishment was clubbed

and covered retrospectively and huge amounts were recovered from the appellant towards contribution. Since the appellant establishment is covered retrospectively it is not possible to attribute any intentional delay in remittance of contribution. According to the learned Counsel for the respondent, it was the responsibility of the appellant to come forward and remit the contribution when the statutory requirements are met. The compliance under the Act does not depend on the will of any employer/employee or any officers of the respondent organisation. Having failed to start compliance from the date of eligibility, the appellant cannot plead that there was no intentional delay in remittance of contribution. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in ***Mcleod Russell India Ltd. Vs Regional Provident Fund Commissioner***, 2014(15) SCC 263 and ***Assistant Provident Fund Commissioner Vs Management of RSL***

Textiles India Pvt. Ltd., 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”*

The above judgement of the Hon'ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

6. It is an undisputed fact that the appellant establishment was covered retrospectively from 01.04.2009 in 2013. It is also not disputed that the appellant did not recover

the employee's share of contribution from its employees and therefore the appellant was compelled to remit both the contributions. Considering the special circumstance of this case, the appellant is entitled for some relief with regard to the damages under Sec 14B of the Act.

7. 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 70% of the damages.

Hence the appeal is partially allowed, the impugned order under Sec 14B of the Act is modified and the appellant is directed to remit 70% of the damages.

Sd/-
(V.Vijaya Kumar)
Presiding Officer