



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

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

(Friday the, 15th day of April 2022)

APPEAL No. 19/2021

Appellant : M/s. Palace Foods
Mankarathodi House
Panakkad, Pattarkadavu.P.O.
Malappuram – 676 519

By Adv. Varghese John

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Bhavishyanidhi Bhavan
Eranhipalam, Kozhikode – 673 006

By Dr.(Adv)Abraham P Meachinkara

This case coming up for final hearing on 13.04.2022 and this Tribunal-cum-Labour Court on 15.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KK/1512013/Enf. 1(4)/14B/2019-20/5005 dated 10.01.2020 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred

to as 'the Act') for belated remittance of contribution from 04/2017 – 01/2018 (remittance made during the period from 26.01.2019 to 30.09.2019). The total damages assessed is Rs.39,459 (Rupees Thirty nine thousand four hundred and fifty nine only)

2. The appellant is an establishment engaged in the business of running a restaurant and covered under the provisions of the Act. From April 2017 to January 2018, the appellant could not remit the contributions within the time frame stipulated under the EPF Act. However the contributions were paid belatedly. Subsequent to the payment, the respondent authority issued a notice dated 21.11.2019 directing the appellant to show cause why damages and interest under Sec 14B and 7Q respectively, should not be levied. Without considering the matter on merit, the respondent authority issued order under Sec 14B of the Act, a copy of which is produced and marked as Annexure A1. A copy of the order issued under Sec 7Q of the Act is produced and marked as Annexure A2. The registration of the appellant establishment was cancelled as per certificate dated 03.07.2019 issued by Sales Tax authority. A

true copy of the certificate is produced and marked as Annexure A3. The respondent authority failed to examine the case of the appellant on merit. In ***Employees Provident Fund Organization Vs Sreekamakshy Agency (Pvt.) Ltd.*** 2013 (2) KLT 996 and in ***Regional Provident Fund Commissioner Vs Harrison Malayalam Ltd.*** 2013 (3) KLT, the Division Bench of Hon'ble High Court of Kerala held that financial constraints are required to be considered while deciding the quantum of damages. Penalty cannot be saddled on somebody who is not guilty. The respondent authority ought to have taken into account the mitigating circumstances. In ***Assistant Provident Fund Commissioner, EPFO Vs Management of RSL Textiles India Pvt. Ltd.***, 2017 (3) SCC 110, the Hon'ble Supreme Court held that the presence or absence of mensrea or actus reus will be a determinative factor in imposing damages under Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant is liable to remit contribution within 15 days of close of every month as per Para 30 of the EPF Scheme. The appellant delayed remittance of contribution. The

respondent therefore issued a notice dated 21.11.2019 directing the appellant to explain the delay and show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing. Nobody attended the hearing, although the notice was acknowledged by the appellant. On the basis of the records available, the respondent authority issued the impugned order assessing damages and interests. In **Calicut Modern Spinning and Weaving Mills Ltd. Vs Regional Provident Fund Commissioner**, 1982 KLT 303, the Division Bench of Hon'ble High Court of Kerala held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. In Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 5 SCC 361, held that mensrea is not an essential ingredient for contravention of a provision of civil Act.

4. Admittedly, the appellant establishment delayed remittance of contribution for the period from 04/2017 to 01/2018. The respondent authority therefore initiated action for assessment of damages and interest. A notice was issued to the

appellant along with a delay statement. The appellant was also given an opportunity for personnel hearing. The appellant acknowledged the receipt of the notice. However the appellant failed to attend the enquiry. The respondent therefore issued orders on the basis of the records placed before him.

5. In this appeal, the learned Counsel for the appellant argued that there was delay in remittance of contribution due to the financial difficulty of the appellant establishment. The learned Counsel further submitted that the registration of the appellant establishment under Sale Tax Act is cancelled w.e.f. 01.02.2018 and the appellant remained closed from that date. Though the appellant failed to produce any documents to substantiate their claim of financial difficulty, the appellant produced Annexure A3 order of cancellation of registration dated 03.07.2019 issued by the Sales Tax Officer. As per the above certificate, the registration of the appellant establishment is cancelled w.e.f. 01.02.2018.

6. The learned Counsel for the appellant also argued that there is no mensrea in belated 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.

7. Though the appellant failed to produce any documents to substantiate the claim of financial difficulty, the appellant produced the cancellation of registration of the Sales Tax as Annexure A3, according to which the registration of the appellant establishment was cancelled w.e.f. 01.02.2018. According to the learned Counsel for the appellant, the appellant establishment is closed w.e.f. 01.02.2018. In view of the closure of appellant establishment due to financial difficulty, the appellant establishment is entitled for some relief with regard to damages under Sec 14B of the Act.

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. Marys 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. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice is met if the appellant is directed to remit 60% of the damages assessed under Sec 14B of the Act. Appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-
(V.Vijaya Kumar)
Presiding Officer