



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

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

(Friday the 24th day of September 2021)

APPEAL Nos. 192/2019,197/2019, 203/2019 & 250/2019

(Old Nos. ATA 59(7)/2015, 57(7)/2015, 58(7)/2015 &
383(7)/2015)

Appellants

1. M/s. Vellani Estate,
Division of Kuppakayam Estate
Travancore Rubber & Tea Co. Ltd.
Mundakkayam.P.O.
Idukki District – 686 513

By Adv. Joseph & Markos

2. M/s. Orkaden Estate
Division of Manikal Estate
Travancore Rubber & Tea Co. Ltd.
Mundakkayam .P.O.
Idukki District – 686 513

3. M/s. Manikal Estate
Travancore Rubber & Tea Co. Ltd.
Mundakkayam .P.O.
Idukki District – 686 513

4. M/s. Valley and Tea Estate
Division of Kuppakayam Estate
Travancore Rubber & Tea Co. Ltd.
Mundakkayam.P.O.
Idukki District – 686 513

By M/s. Joseph & Kuriyan

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 23/04/2021 and this Tribunal-cum-Labour Court on 24/09/2021 passed the following:

ORDER

1. **Appeal No.192/2019** is filed from order No.KR/KTM/2372/APFC/Penal damages/2014/13208 dated 18/11/2014 assessing damages us 14 B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for a period from 12/2007 to 07/2014. Total damages assessed is Rs. 27,287/-

2. **Appeal No. 197/2019** is filed against order No.KR/KTM/106/APFC/Penal damages/2014/14072 dated 05/12/2014 assessing damages for belated remittance of contribution for period from 01/2004 – 04/2014. Total damages assessed is Rs. 54,847/-

3. **Appeal No. 203/2019** is filed against order No. KR/KTM/315/PD/2014/12824 dated 10/11/2014 assessing damages for belated remittance of contribution for period from 11/2007 to 09/2013. Total damages assessed is Rs. 69,132/-

4. **Appeal No. 250/2019** is filed against order No. KR/KTM/109/AFPC/Penal damages/2015/17722 dated 13/02/2015 assessing damages for belated remittance of contribution for a period from 04/2003 to 04/2014. Total damages assessed is Rs. 42,065/-

5. In all these cases except 203/2019, the interest demanded under Section 7Q of the Act for the same period are also being challenged.

6. Since common issues are raised all these appeals are heard together and disposed of by a common order.

7. The appellants are estates at Mundakkayam, Idukki district in State of Kerala. The respondent organisation was following a manual remittance system till February 2012. From March 2012 onwards, the responded

organisations started ECR system of receiving contribution through electronic method. As in the normal course, the appellants forwarded the contribution for the month of March 2012 to the State Bank of Travancore on 13/04/2012. The bank, though accepted the payment, returned the DD stating that the Provident Fund contribution can be paid only through electronic transfer. The appellants had about 1050 workers and the data entry was a herculean task which took considerable time. Since there was a delay in remittance of contribution and the appellants found it difficult to remit the contribution through E-challan, forwarded an amount of Rs.44,97,272/- through DD to the respondents' office. The respondent did not accept the DD stating that the payment from March 2012 onwards will have to be remitted through E-challan only. There was strike in the appellant's estates from 01/06/2012 to 20/06/2012. Subsequently the appellants could remit the contribution only on 04/10/2012. The above circumstances lead to the delay in remittance of contribution. The respondent authority issued a notice under Section 14B of the Act alleging delay in remittance.

Representatives of appellants attended the hearing and explained the circumstances leading to delay in contribution. Ignoring the contentions of the appellants the respondent issued the impugned orders. The appellant's establishment's bonafides is clear from the attempt of the appellants to remit contributions on 13/04/2012 through State Bank of Travancore. Further it was also pointed out to the respondent authority that the DD for Rs. 44,97,272/- was forwarded to the office of the respondent on 16/07/2012 . It is very clear from the above that there was no mensrea on the part of the appellants in the belayed remittance of contribution.

8. The respondent filed counter denying the above allegations. The appellants are liable to remit contributions payable under three Schemes within 15 days of close of each month as required under para 38 of EPF scheme, 1952. The appellants delayed remittance of contribution. The delayed remittance of contribution will attract damages under Section 14B of the Act read with para 32A of EPF scheme. Accordingly notices were issued to the appellants to show

cause while damages shall not be levied for belated remittance of contribution. The appellants were also given a chance for personnel hearing. Authorised representatives of the appellants attended the hearing and submitted payment Challan's. From the challans, it was noticed that for some months for which notice was issued, the appellants remitted the contribution in time. Accordingly those months for which contributions were paid in time were excluded and the damages for the rest of the months where there was actual delay was assessed.

9. From March 2012 onwards the respondent organisation introduced Electronic Return cum Challan (ECR) remittance in the place of manual challan. Extensive training was given to all employers sufficiently in advance to avoid any confusions with regard to the remittance. The advantage of new remittance is that the appellants need not file any paper return and the remittance will be automatically linked with the field officers and this will help auto updating of the members balance once the remittance is confirmed. The annual account statements of the members will be in

electronic format and is available to the employers through web portal of EPF. The details and procedure to remit the contribution was widely publicised through advertisements and EPFO websites. Hence the claim of the appellants that they could not remit the contribution in time due to the introduction of new system of payments cannot be accepted.

10. Order issued under Section 7Q is not appealable as there is no provision under Section 7(I) of the Act to prefer an appeal from an order issued under Section 7Q.

11. The only ground pleaded by the appellants in this appeal for delayed remittance of provident fund contribution is that of the introduction of the E-payment system by the respondent organisations. According to the appellants, they made an attempt to remit the contribution for the month of March 2012 through their bank but the bank refused to accept the same. After 3 months they made an attempt to remit the contribution through DD directly to the respondent's office which also failed because the respondent office refused to accept DD as there was no provision to accept contribution other than through E-challan system.

According to the appellants the delay in remittance was due to the above reason. A perusal of the impugned order in appeal No. 192/2019, it is seen that the delay in remittance of contribution was there for the months 06/2011, 08/2011, 03/2012 to 08/2012 and 01/2013. In appeal No. 197/2019, it is seen that the damages were assessed for delayed remittance of contribution for the months 11/2007, 01/2009, 03/2009, 10/2009, 06/2011, 08/2011, 03/2012 to 08/2012 and 01/2013. In appeal No. 203/2019, it is seen that the damages were assessed for the delay in remittance for the months 11/2007, 10/2010, 06/2011, 08/2011, 03/2012 to 08/2012, 01/2013 and 09/2013. In appeal No. 215/2019, delay in remittance was for the month of 01/2007, 08/2011 and 03/2012 to 01/2013. Hence it can be seen that the total damages assessed covers the delay in various months and not confined to the delay from 03/2012 to 08/2012. The Learned counsel for the respondent also pointed out that the establishments were given intensive training before introduction of E-challan method of payment of contributions. He relayed on Exbt R1 series to show the

detailed training program conducted for the sake of employers before introduction of E-challan systems. Even assuming that there was some problem for the appellants in remittance for a month, there is absolutely no justification for the delay of six months in remitting the contribution. The appellants were very well aware that the contributions cannot be accepted by the banks or the offices of the respondent organisation after introduction of ECR system of payments. Hence the claim of the appellants that they made attempts to remit the contribution will not absolve them of the liability to pay damages. Even if it is assumed for argument sake, that there was delay for a period from 03/2012 to 08/2012 due to the introduction of the ECR system, the appellants failed to explain the delay in remittance of contribution for the previous and subsequent months. According to the learned Counsel for the respondent, the appellants had already recovered the employee share of contribution when the salary is paid and non-remittance of the employees share of contribution deducted from the salary of the employees but not remitted with the respondent organisation will amount to

breach of trust under Sec 405/406 of Indian Penal Code. The appellants therefore cannot plead that there was no mensrea or intentional delay in remittance of contribution to atleast 50% of the contribution deducted from the salary of the employees.

12. Considering the fact that the appellants made some attempts to remit the contributions for the month of 03/2012 no mensrea can be alleged against the appellant for that part of the delay in remittance of contribution. However the appellants cannot escape the liability for the rest of the months.

13. Considering the facts, circumstances and pleadings in these appeals, I am inclined to hold that interest of justice will be met if the appellants are directed to remit 80% of the damages assessed as per impugned orders under Section 14B of the Act.

14. The learned Counsel for the respondent submitted that there is no provision to challenge the orders issued under Section 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.

Hence the appeals are partially allowed, the impugned order issued under Section 14B of the Act are modified and the appellants are directed to remit 80% of the damages assessed. The appeals filed against Section 7(Q) order are dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer