



सत्यमेव जयते

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

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

(Monday the, 29th November 2021)

APPEAL No. 193/2019

(Old No. ATA 60 (7) 2015)

Appellant

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

By M/s. Joseph & Markos

Respondent

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 01.09.2021 and this Tribunal-cum-Labour Court on 29.11.2021 passed the following:

ORDER

Present Appeal is filed from order No. KR/KTM/448/ APFC/ Penal Damage-1(1)/2014/13512 dated, 26.11.2014 assessing damages under Section 14B of EPF Act and MP Act (hereinafter referred to as the Act) for belated remittance of contribution for

the months 12/2003, 04/2005, 11/2007, 06/2007, 08/2011, 03/2012 – 08/2012 and 01/2013. The total damages assessed is Rs. 72,733/- (Rupees seventy two thousand seven hundred and thirty three only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is an estate 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 appellant 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 appellant 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 appellant found it difficult to remit the contribution through E-chalan, 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-Chalan only. There was strike in the appellant's estates from 01/06/2012 to 20/06/2012. Subsequently the appellant 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 appellant attended the hearing and explained the circumstances leading to delay in contribution. Ignoring the contentions of the appellant the respondent issued the impugned orders. The appellant establishment's bonafide is clear from the attempt of the appellant 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 appellant in the belayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant 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 appellant 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 appellant to show cause while damages shall not be levied for belated remittance of contribution. The appellant were also given a chance for personnel hearing. Authorised representatives of the appellant attended the hearing and submitted payment Chalan's. From the chalans, it was noticed that for some months for which notice was issued, the appellant 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.

4. From March 2012 onwards the respondent organisation introduced Electronic Return cum Chalan (ECR) remittance in the place of manual chalan. Extensive training was given to all employers sufficiently in advance to avoid any confusion with regard to the remittance. The advantage of new remittance is that the appellant 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 appellant that they could not remit the contribution in time due to the introduction of new system of payments cannot be accepted.

5. 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.

6. The only ground pleaded by the appellant 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 appellant, 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-Chalan system. According to the appellant the delay in remittance was due to the above reason. The learned Counsel for the appellant pointed out that the dues for the period 07/2011, 09/2011 to 02/2012 were remitted in time. On a perusal of the impugned order, it is seen that the respondent authority has excluded the above period from the assessment of damages. However the representative of the appellant admitted that there was delay in remittance of contribution for the months 12/2003, 04/2005, 11/2007, 06/2007, 08/2011, 03/2012 – 08/2012 and 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-Chalan 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-Chalan systems. Even assuming that there was some problem for the appellant 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.

7. 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 appellant cannot escape the liability for the rest of the months.

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

9. 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.

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

Sd/-
(V.Vijaya Kumar)
Presiding Officer