



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 11th day of October 2021)

APPEAL No.280/2019

Appellant : M/s. Pooram Foods
VI/137, Old XII/176,
New Madakkathara P.O.,
West Vellanikara
Thrissur – 680 656.

By Adv. C B Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Bhavishya Nidhi Bhavan
Kaloor, Kochi – 682 0017.

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 06/07/2021
and this Tribunal-cum-Labour Court on 11/10/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KCH/1049288/
DAMAGES/2019/891 dated 26/03/2019 assessing damages
under Sec 14B of EPF and MP Act(hereinafter referred to as ‘the

Act') for belated remittance of contribution for a period from 01/07/2015 to 31/03/2018. Total damages assessed is Rs.1,68,375/-. The interest demanded under Sec 7Q of the Act for period from 01/04/2014 to 30/11/2018 is also being challenged in this appeal.

2. The appellant is a registered partnership firm engaged in the preparation and sale of pickles. The appellant received notice dated 13/12/2018 from the respondent proposing levy of damages for the alleged delay in payment of Provident Fund contribution. A copy of the summons is produced and marked as Annexure A3. The appellant was also given an opportunity for personnel hearing on 16/01/2019. The appellant appeared before the respondent. The representative of the appellant submitted that there was delay in remittance of contribution due to financial crisis and the hardships created by the Pollution Control Board. The Pollution Control Board directed the appellant to close down the unit for a long period. Copy of said notice dated 29/09/2015 issued by the Kerala State Pollution Control Board is produced and marked as Annexure A4. The appellant approached Hon'ble

High Court of Kerala in WP(C) No. 30505/2015(K) against the notice of the Pollution Control Board. Though the appellant unit was closed at that point of time, the appellant paid wages to its employees. The order issued by the Hon'ble High Court of Kerala dated 15/10/2015 is produced and marked as Annexure A5. Without considering the above submissions the respondent issued the impugned orders.

3. The head quarters of the respondent organisation vide its circular dated 25/09/1990 informed that the damages under Sec 14B also include interest chargeable under Sec 7Q of the Act. A copy of the circular is produced and marked as Annexure A6. The above circular was approved by the Hon'ble High Court of Delhi in **Systems and Stamping and Another Vs Employees' Provident Fund Appellate Tribunal**, 2008 LLR 458. The respondent authority failed to exercise its discretion provided under Sec 14B of the Act and Para 32A of EPF Scheme. In **Assistant Provident Fund Commissioner Vs Ashram Madhyamik**, 2007 LLR 1249 the Hon'ble High Court of Madhya Pradesh held that levy of damages for belated remittance of contribution is only discretionary. The Hon'ble

Supreme Court of India in **Employees' State Insurance Corporation Vs H.M.T Ltd.** 2008-1-LLJ-814(SC) held that when a discretion is conferred on a statutory authority to levy penal damages, the provision could not be construed as imperative. In this particular case the delay was beyond the control of the appellant and therefore there was no mensrea in belated remittance of contribution. In **V.S. Murugan Vs Regional Provident Fund Commissioner**, 2011(4) LLN 778 the Hon'ble High Court of Madras held that simply because the statutory provisions enable authority to impose penalty, it does not mean that such penalty should be imposed in a mechanical way without looking into the circumstances.

4. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution for the period from 04/2015 – 03/2017. The delay in remittance will attract damages under Sec 14B of the Act. The respondent therefore issued a summons dated 13/04/2018 along with a delay statement, to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing

on 05/02/2019. An authorised representative of the appellant attended the hearing. The appellant did not raise any dispute regarding the assessment of damages and also statements forwarded to them. The appellant also did not produce any documents before the respondent authority. Hon'ble Supreme Court of India in **Hindustan Times Limited Vs Union of India**, AIR 1998 S.C 688 held that bad financial condition is no defence for delayed deposit of Provident Fund contribution. Sec 14B was introduced into the Act with an object to act as a deterrent on the employer to prevent them from further default. The circular dated 29/05/1990 has no relevance to the proceedings after the amendment of Para 32A on 26/09/2008. The decision of the Hon'ble High Court of Delhi referred by the appellant also has no relevance to the present case, as the said judgement has not taken the amendment to Para 32A of EPF Scheme into account. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, 9523-9524/2003 held "that mensrea is not an essential ingredient for contravention of provisions of Civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as

contemplated by the Act and the regulation is established and intension of party committing such violation becomes wholly irrelevant". The Hon'ble High Court of Kerala in **M/s Calicut Modern and Weaving Mills Ltd. Vs Regional Provident Fund Commissioner** – 1982(1) LLJ 440 held that a combined reading of Para 30 and 32 of EPF Scheme shows that in cases where due payment of wages is made impracticable for certain reason, the obligation of the employer to pay both the contributions payable by himself and on behalf of member continues. The appellant defaulted in remittance of even the employees' share of contribution deducted from the salary of the employees' each month. The delay in remittance of employee share deducted from the salary of employee cannot be justified under the grab of financial difficulty or any other grounds.

5. No appeal can be filed under Sec 7(I) from an order issued under Sec 7Q of the Act.

6. There is no dispute regarding the fact that there was delay in remittance of contribution for the period from 04/2015 – 03/2017. The respondent authority issued summons to the appellant along with a delay statement which

is produced and marked as Annexure A3. The appellant was also given an opportunity for personnel hearing on 16/01/2019. A representative of the appellant attended the hearing but did not raise any dispute regarding the proposed damages or the delay statement send along with the summons. Hence the respondent authority issued the orders in terms of the notice send across to them. The appellant in this appeal came up with certain additional grounds for delay in remittance of contribution. One of the grounds pleaded is that the appellant, at that point of time was facing some problems from the Kerala State Pollution Control Board. He produced Annexure A4 closure intention notice dated 29/09/2015 to substantiate his case. It was also pointed out that the appellant approached the Hon'ble High Court of Kerala in WP(C) No. 30505/2015 and the Hon'ble High Court of Kerala vide its order dated 15/10/2015 directed the Pollution Control Board to inspect and report about the present status of the appellants' unit. The learned Counsel for the appellant, however did not disclose the final judgement, if any, passed by the Hon'ble High Court of Kerala in the above case. Though the

learned Counsel for the appellant argued that the unit is closed in 2016, he failed to produce any documents to substantiate his claim. The very fact that the present proceedings under Sec 14B of the Act is initiated for belated remittance of contribution upto 03/2017 would show that the appellant establishment was working at that point of time or atleast wages of the employees were paid. The learned Counsel for the respondent pointed out that the financial difficulty pleaded by the appellant is not at all supported by any evidence.

7. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages under Sec 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages under Sec 14B, if the appellant pleads and produces documents to substantiate the same. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held

that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Having failed to substantiate the claim of financial difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

8. The appellant failed to produce any documents to substantiate the financial difficult even in this appeal. The learned Counsel for the respondent also pointed out that the appellant failed to remit the employees' share of contribution deducted from the salary of the employees. On a perusal of the AnnexureA3 delay statement, it is seen that the delay in remittance of contribution varied from 140 days to 750 days. The average delay is around 450 days. The appellant has not disputed the claim of the respondent that the wages of the employees were paid in time. If that be so, the appellant was holding the employees' share of contribution deducted from the salary of the employees for more than 450 days in average which amounts to an offence of breach of trust under Sec

405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution.

9. The learned Counsel for the appellant relied on a circular dated 29/05/1990 to argue that the damages under Sec 14B also include interest under Sec 7Q. The said argument is not correct as the Parliament in its wisdom has provided two separate provisions for damages and interest and same cannot be clubbed by a circular. Further the circular also has no relevance after amendment of the Act in 2008 incorporating therein a sliding table under Para 32A of EPF Scheme. The decision of Delhi High Court is also not relevant as the Hon'ble High Court of Delhi has not taken into account the amendment in the EPF scheme.

10. Though the learned Counsel for the appellant pleaded financial difficulty, the same is not at all substantiated in the proceedings before the authority or in this appeal. The appellant produced some documents regarding certain restrictions imposed by Kerala State Pollution Control Board

and also the interim order of Hon'ble High Court of Kerala to prove that there was some disturbances in the appellant establishment during the relevant point of time.

11. 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 assessed under Sec 14B of the Act.

12. 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.

13. Hence the appeal is partially allowed, impugned order under Sec 14B is modified and appellant is directed to remit 70% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)

Presiding Officer