



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

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

(Monday, the 21st day of March 2022)

APPEAL No. 315/2019

(Old No. ATA.977(7)2015)

Appellant : M/s. Lamiya Silks
Mele Pattambi
Palakkad – 679 306

By Mr.Baburaj,
(Authorised Representative)

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

By Adv.(Dr)Abraham P Meachinkara

This case coming up for final hearing on 30.12.2021 and this Tribunal-cum-Labour Court on 21.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KKD/28269/DAM/ENF 4(4)/14B/2015/3984 dated 28.07.2015 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 03/2014 – 03/2015. The total damages assessed is Rs. 1,13,729/-(Rupees One lakh thirteen thousand seven hundred and twenty nine only)

2. The appellant is a Textile shop engaged in the sale of textiles, readymade and related goods. The appellant is covered under the provisions of the Act. The appellant was regular in compliance. The person responsible for remitting contribution left the service without any notice. The delayed remittance of contribution for the period from 03/2014 – 12/2014 was noticed by the appellant only in December 2014. Immediately the appellant remitted the contributions. The appellant received a notice dated 09.04.2014 proposing to levy damages for delayed remittance of contribution. A true copy of the notice dated 09.04.2015 is produced and marked as Annexure 1. A representative of the appellant attended the hearing and explained the reasons for belated remittance of contribution. A written explanation dated 10.06.2015 was also submitted by the appellant. A true copy of the submission is produced and marked as Annexure 2. Without considering the pleadings of the appellant, the respondent issued the impugned order. The

respondent ought to have found that after introduction of Sec 7Q of the Act, the damages component under Sec 14B has gone a lot of change. The Hon'ble Supreme Court of India in ***Employees State Insurance Corporation Vs HMT Ltd. and Another***, AIR 2008 SC 1322, held that the existence of mensrea or actusreus to contravene a statutory provision must also be a necessary ingredient for levy of damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant delayed remittance of contribution. The respondent therefore issued a show cause notice directing the appellant to appear in person or through a representative before the respondent authority on 11.06.2015 to explain the reasons for delay. A representative of the appellant who attended the hearing admitted the delay. The respondent therefore issued the impugned order. According to the representative of the appellant, the delay in remittance of contribution was due to the administrative problems of the appellant establishment and not for any valid reasons. In ***Calicut Modern Spinning and Weaving Mills Ltd. Vs RPFC***,

1982 KLT 303, the Division Bench of the Hon'ble High Court of Kerala held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that the wages had been paid or not. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, held that mensrea is an essential ingredient for contravention of the provision of a Civil Act.

4. The appellant establishment delayed remittance of contribution during the period from 03/2014 to 03/2015. The respondent therefore initiated action for assessment of damages. Notice along with a detailed delay statement was forwarded to the appellant. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and pleaded administrative reasons for delayed remittance of contribution and also admitted the delay. The respondent therefore issued the impugned order assessing damages.

5. In this appeal also the appellant pleaded the same grounds as before the respondent authority. The only ground pleaded by the appellant is that there was a change in the

person handling provident fund remittances in appellant establishment. The reason pleaded by the appellant cannot be taken as a valid ground for reducing damages. It was also pleaded that there was no mensrea in belated remittance of contribution. It is to be noted that even the employee share deducted from the salary of the employee's is withheld by the appellant thereby committing the offence of breach of trust under Sec 405/406 of Indian Penal Code. 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. Considering the facts, circumstances, pleadings and arguments in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer