



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Tuesday, 14th day of December 2021)

APPEAL No. 352/2019
(Old No. ATA 769 (7) 2015)

Appellant

M/s. Musaliyar College of
Engineering and Technology
P.B.No. 7, Kumbazha.P.O.
Pathanamthitta – 689 653

By : Adv. C.M.Stephen

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan, Pattom
Thiruvananthapuram – 695 004

By Adv. Ajoy.P.B.

This case coming up for final hearing on 06.09.2021 and
this Tribunal-cum-Labour Court on 14.12.2021 passed the
following:

ORDER

Present Appeal is filed from order no. KR/16954/RO/
TVM/PD/2014/10113 dated 13.03.2015 assessing damages
under Section 14B of EPF Act and MP Act (hereinafter referred
to as 'the Act') for belated remittance of contribution from

03/2010 – 11/2013. The total damages assessed is Rs.1,47,114/- (Rupees one lakh forty seven thousand one hundred and fourteen 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 Engineering College covered under the provisions of the Act. The appellant remitted the contributions and therefore is not justified in demanding damages and interests. A copy of the impugned order dated 13.03.2015 is produced and marked as Annexure A1. There was no delay in remittance of contribution by the appellant establishment. The respondent ought not have taken the date of presentation of cheque for assessing damages under Sec 14B of the Act. A true copy of the chalan evidencing payment of monthly contribution for the period 03/2010-11/2013 is produced and marked as Annexure A2 series. Respondent never issued any show cause notice to the appellant and therefore there was clear violation of the provisions of the Act. The notice dated 21.03.2014 issued by the appellant is non-speaking. The communication was absolutely unclear regarding the source of information. A copy of the notice dated

21.03.2013 is produced and marked as Annexure A3. The respondent authority issued a composite order which is beyond the jurisdiction of the respondent authority. There was no allegation in the impugned order regarding any intentional delay in remittance of contribution. It is not correct that the representative of the appellant who participated in the enquiry on 09.02.2015 admitted the delay. The impugned order is not sustainable for the reason that no proper opportunity was given to the appellant to explain the delay. The appellant was facing financial constraints during the relevant point of time and the respondent authority failed to consider the same while passing the impugned order. The respondent authority ought to have seen that the appellant is liable to be penalise only for deliberate delay or irresponsible conduct. There was no mensrea in the delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 03/2010 to 11/2013. The appellant is liable to remit contribution every month within 15 days of close of the month and any further delay in remittance of contribution will attract damages under Sec 14B and interest

under Sec 7Q of the Act. The Hon'ble Supreme Court of India in Mrs. **Organo Chemical Industries Vs Union Of India**, 1979 AIR (SC)1803 held that "*This social security measure is a human homage the state pays to Article 39 to 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory till*". Any delay in remittance beyond 20th will be treated as a default and action will be initiated for levy in damages. In the event of remittance by cheque to the bank, the date of receipt by the bank as per the date stamp affixed by the bank is taken as the date of remittance. In case of remittance by cheque directly to the bank, the date of presentation of cheque as found stamped by the bank on the triplicate of chalan will be taken as remittance. Though the appellant received the notice, he failed to submit any objection to the notice. In **Jintan Thermometer Company India Pvt. Ltd. Vs**

Union Of India, 1974 (46) FJR 371 (Punj) (FB) the full bench of Punjab and Haryana High Court held that in the absence of any objection raised by the employer before the 14B authority, there is no logic in stating that the impugned order is a non-speaking order. The same position was retroacted in **TCM Woollen Mills Pvt. Ltd Vs RPFC**, 1980 (57) FJR 222 and **Super Processors Vs Union Of India**, 1992 (64) FLR (Bom). The show cause notice dated 18.03.2014 and 21.03.2014 were sent by registered post and the same has been acknowledged by the appellant on 21.03.2014 and 26.03.2014 respectively. The copies of the acknowledgement is produced and marked as Annexure R2. The enquiry was adjourned to various dates and finally a representative of the appellant attended the hearing on 09.02.2015 and admitted the delay. In Annexure A3 notice, it was made very clear that in case the appellant made the payment within the respective due dates, the supporting documents of proof of such remittance may be produced on the date of hearing. The representative of the appellant attended the hearing on 09.02.2015 and admitted the delay. Copy of the daily order sheet dated 09.02.2015 is produced and marked as Annexure R3. The demand of interest under Sec 7Q is not

appealable and no hearing is contemplated as per the provision. In **Calicut Modern Spinning and Weaving Mills Ltd. Vs RPFC**, 1981 (1) LLJ 440, the Hon'ble High Court of Kerala held that a combined reading of Para 30 and 38 of Employees' Provident Fund Scheme shows that in case where the due payment of wages is made impracticable for certain reasons, the obligation of the employer to pay both contribution payable by himself and on behalf of the member continues. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of civil Act. EPF is a funded Scheme and its prompt compliance by the employers are required for smooth implementation of the Welfare Legislation. In **Arvind Mills Ltd. Vs R.M.Gandhi**, 1982 LIC 344, the Hon'ble High Court of Gujarat held that merely because of the company was experiencing a financial hardship it was not justified in refusing to pay its dues under the Act and the Scheme including the deductions made from the wages of the workers.

4. The impugned order issued under Sec 14B is challenged by the appellant on three grounds. The first ground

taken by the appellant is that they were not in receipt of summons issued by the respondent. On a perusal of the impugned order it is seen that a representative of the appellant attended the hearing and admitted the delay in remittance of contribution. The daily order sheet in Annexure R3 produced by the respondent also would clearly show that a representative of the appellant attended the proceedings on 09.02.2015 and admitted the delay and agreed to pay the damages immediately. Hence the contention of the appellant that they were not in receipt of the summons cannot be sustained. The second ground taken by the appellant is that there was no delay in remittance of contribution. The appellant produced Annexure A2 series of copies of remitted chalans to substantiate the claim. On perusal of the copies of the chalans, it is seen that there was delay in the remittance of contribution. The learned Counsel for the respondent pointed out that the date of presentation of cheque before the bank is taken as the date of remittance on the basis of the date stamp affixed on the chalans. Hence the claim of the appellant that there was no delay cannot be accepted. The third ground pleaded by the appellant is that of financial constraints. According to the

learned Counsel for the respondent, no documents were produced either before the respondent authority or in this appeal to substantiate the claim of financial difficulty. 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. Since the appellant

failed to prove their claim of financial difficulty, it is not possible to accept the argument of the appellant that the delay in remittance of contribution was due to the financial difficulty of the establishment during relevant point of time. The last ground pleaded by the appellant was that there was no intentional delay in delayed remittance of contribution. It was also pleaded that there was 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. The claim regarding non-speaking order also has no relevance as the appellant admitted the liability before the respondent authority.

5. The learned Counsel for the appellant pointed out that there is no provision under Sec 7(I) to maintain an appeal from an order issued under Sec 7Q of the Act. 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.

6. Considering the facts, circumstances, pleadings evidence and arguments in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal against 14B is dismissed on merit. The appeal against 7Q order is dismissed as not maintainable.

Sd/-
(V.Vijaya Kumar)
Presiding Officer