



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 29<sup>th</sup> day of November 2021)

**APPEAL No. 362/2019 & 795/2019**

Appellant

1. M/s. Valley End Tea Estate  
Mundakayam East,  
Kottayam – 686 513
2. M/s. Vellani Estate  
The Travancore Rubber & Tea  
Company Ltd.  
Kuppakkayam.P.O.  
Mundakayam  
Kottayam – 686 513

By M/s. Joseph & Kuriyan

Respondent

The Assistant PF Commission  
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**

**Appeal No. 362/2019** is filed from order No. KR/KTM/109/APFC/Penal Damage/14B/2019-2020/1543 dated 24.06.2019 assessing damages under Section 14B of EPF Act and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 01/2015 – 01/2019 (remittance of EPF dues between 25.08.2016 and 31.03.2019). The total damages assessed is Rs. 95,996/- (Rupees ninety five thousand nine hundred and ninety six only)

**Appeal No. 795/2019** is filed from order No. KR/KTM/2372/APFC/Penal Damage/14B/2019-2020/7023 dated 01.11.2019 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution from 01/2015 – 01/2019 (remittance of EPF dues between 09.05.2016 – 30.06.2019). The total damages assessed is Rs. 54,390/-

The interest demanded under Section 7Q is also being challenged in both these appeals.

2. The appellant estates are owned by M/s. Travancore Rubber and Tea Company Ltd., a Public Ltd. Company registered under the Companies Act 1956. The appellant is engaged in the production and sale of rubber related products. There was delay in remittance of Provident Fund contribution on account of financial crisis and paucity of funds. The respondent issued notice directing the appellants to show cause why damages shall not be levied for belated remittance of contribution. The appellants were also given an opportunity for personnel hearing. A representative of the appellant attended the hearing. The representative of the appellant explained that the delay was not deliberate and only was due to financial difficulty. It was also pointed out that there was also some dispute regarding the ownership of land because of Rajamanickam report. The workers also resorted to go slow and refusal to complete the allotted task. The respondent issued the impugned order ignoring the contentions of the appellant. The respondent failed to consider the fact that there was no element of mensrea on the part of the appellants in delayed remittance of contribution. In **Employee State**

**Insurance Corporation Vs HMT Ltd**, 2008 (3) SCC 35, the Hon'ble Supreme Court held that existence of mensrea or actusreus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages. The respondent failed to consider the mitigating circumstances of the appellant establishments. In **Sree Kamakshy Agency Pvt. Ltd. Vs EPF Appellate Tribunal and another**, 2013 (1) KHC 457 the Hon'ble High Court of Kerala held that the authorities under Sec 14B of the Act shall see whether there is a deliberate intention by the employers to withhold the Provident Fund money.

3. Respondent filed counter denying the above allegations. The appellants delayed remittance of contribution and therefore the respondent initiated action for assessing damages under Sec 14B of the Act read with Para 32A of EPF Scheme. Notices were issued to the appellants along with a delay statement. In **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 LAB IC 1422, the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month

and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions in the first instance. An opportunity for personnel hearing was also given. A representative of the appellant appeared and pleaded financial difficulties as a ground for delayed remittance of contribution. The pleading of financial difficulty is without any documentary evidence or any explanation to the effect that the financial difficulty was due to the reasons beyond the control of the appellants. In **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not a relevant consideration while assessing penalty or damages in cases of civil obligation.

4. The learned Counsel for the respondent pointed out that no appeal is maintainable under Sec 7(I) 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.

5. In view of the above legal position the appeals against 7Q orders are dismissed as not maintainable.

6. According to the learned Counsel for the appellant the delay in remittance of Provident Fund contribution was due to the financial constrains of the appellant establishments. The appellant produced one page extract of the Profit and Loss statement for the years 2015 – 2016, 2016 – 2017, 2017 – 2018 and 2018 – 2019. Learned Counsel for the respondent submitted that these documents were not produced before the respondent authority and therefore the same shall not be accepted in the appeal. The one page extract of Profit and Loss account produced by the appellant in this appeal will not in any way prove the financial position of the appellant establishment.

In the first place, the extracts are that of the parent company which owns many estates and therefore, it will not disclose the actual financial position of the appellant establishment. Further the figures reflected in the Profit and Loss account and Balance Sheet cannot be accepted unless these figures are proved before the respondent authority. The Hon'ble Supreme Court of India in ***Aluminium Corporation Vs Their Workman and Others***, 1964 (4) SC 429, held that the mere statements in balance sheet as regards the current assets and current liability cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. The learned Counsel for the respondent pointed out that the appellant has no case that the wages of the employees were not paid in time. When wages of employees are paid, the employee share of contribution is deducted from the salary of the employees. Non-remittance of the employees' share of contribution deducted from the salary of the employees is 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 intentional delay in remittance of contribution atleast to the extent of 50% of the total contribution.

7. The learned Counsel for the appellant submitted that there was no mensrea in belated remittance of contribution and the same was only due to the financial difficulty of the appellant. 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.

8. Though the documents produced by the appellants in this appeal cannot be considered for the reasons stated above, it would clearly indicate that the appellant establishment was under heavy loss during the relevant period of time. Considering the financial constraints, the appellant deserve some accommodation as far as damages under Sec 14B is concerned.

9. Considering the facts, pleadings and arguments in these appeals, I am inclined to hold that interest of justice will be met if appellant is directed to remit 80% of the damages.

10. Hence the appeals against 14B orders are partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages. The appeal against 7Q orders are dismissed as not maintainable.

Sd/-

**(V.Vijaya Kumar)**  
Presiding Officer