



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

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

(Moday, the 10th day of January 2022)

APPEAL No. 368/2019

Appellant : M/s. Sai Export Enterprises,
Prasanthi Nagar,
Mangad.P.O.,
Kollam – 691 005.

By Adv.B.Mohanlal

Respondents : 1. The Regional PF Commissioner
EPFO, Regional Office,
Ponnamma Chambers
Kollam – 691 001.

By Adv. PirappancodeV.S.Sudheer

2. Smt. Aneeta Rajan, D/o. Rajan,
St. George Cashew Traders,
Ambalathumkala, Kakkakottoor Muri
Ezhukone Village, Ambalathumkal.P.O.
Kollam – 691 505.
3. Sri.Mathew K Rajan, S/o. Rajan,
St. George Cashew Traders,
Ambalathumkala, Kakkakottoor Muri
Ezhukone Village, Ambalathumkal.P.O.
Kollam – 691 505.
4. Sri. Sarath Chandran
S/o. Babu Chandran
Sandhya Cashews, Sindhu Bhavanam,
Thuvayoor Thekku Muri,
Erathu Village, Adoor Taluk,
Mankala.P.O.
Pathanamthitta – 691 551.

This case coming up for final hearing on 29.09.2021 and this Tribunal-cum-Labour Court on 10.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KLM/1265/PD/2018-19/580 dated 12.07.2019 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 03/1991 – 02/2000. The total damages assessed is Rs. 7,20,472/-. The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant establishment is running cashew factories at various locations. The first respondent issued two separate notices for the period 03/1991 to 08/1997 and 09/1997 to 02/2000 under Sec 14B and 7Q of the Act to the appellant and respondents 2 & 3. The notices to respondent 2 & 3 were returned. The appellant appeared before the 1st respondent and submitted that the appellant took over the establishment only on 09/1997 by virtue of Sale Deed No. 1472/1999, 1466/1999, and 1467/1999. The true copy of the above Sale Deeds are produced and marked as Exhibit A3 to A5. The appellant therefore

requested that the damages for the period 03/1991 to 08/1997 may be recovered from the previous employer. However the 1st respondent without verifying the records directed the appellant to remit the damages and interest. The appellant challenged the above order before the Hon'ble High Court of Kerala in W.P.(C)No. 27006/2006. The Hon'ble High Court by judgement dated 10.11.2008 remanded the matter with a direction to the appellant to appear before the 1st respondent on 10.12.2008 or any other date fixed by the respondent. The true copy of the judgement is produced and marked as Exhibit A6. The 1st respondent issued notice to the appellant to appear on 27.02.2019. The appellant submitted an objection stating that the appellant has taken over the establishment during 1999 and run the establishment upto 31.08.2008. The establishment was sold to the 4th respondent Sandhya Cashews on 11.08.2010 by virtue of Sale Deed No. 3423/2010. A true copy of the above Sale Deed is produced and marked as Exhibit A7. The appellant also contended that he may not be saddled with liability of 14B and 7Q for the above period. The appellant also filed a written statement pointing out the factual position on 21.05.2019. A copy of the written statement is produced and marked as Exhibit A8. Due to acute financial

difficulty, the salary and statutory payments for every month is delayed. There was no deliberate or wilful defiance of law and there was no contumacious conduct on the side of the appellant. In view of the decision of the Hon'ble Supreme Court of India in ***Hindustan Steel Ltd. Vs State of Orissa***, AIR 1970 SC 253, the first respondent ought to have waived the liability under Sec 14B of the Act. The assessment of damages is done after a period of 3 years and therefore claiming of damages under Sec 14B is barred by limitation. The appellant is totally in dark about the calculation of damages under Sec 14B of the Act. There is no finding by the 1strespondent that there was deliberate and wilful delay. The 1strespondent ought to have found that if there is any loss, the same can be compensated by way of interest. Sec 14B as it stands now is purely punitive in nature. Hence the 1strespondent ought to have followed the guidelines given by the Hon'ble Supreme Court of India in ***M/s. Hindustan Steel Ltd Vs State of Orisa***, AIR 1970 SC 253. The Hon'ble High Court of Kerala in ***Harrisons Malayalam Ltd Vs RPFC***, 2012 (1) KHC 243, held that merely because there is delay in payment of contribution, liability to pay damages does not arise automatically.

3. The respondent filed counter denying the above allegations. The appellant is the Managing Partner of M/s. Sai Exports Enterprises which is an established in the private sector engaged in the processing of cashew kernels. The appellant establishment is covered under the provisions of the Act. The establishment was purchased by the appellant on 22.04.1999 from Smt. Aneeta Rajan and Sri. Mathew K Rajan. The establishment remitted the contribution belatedly for the period from 03/1991 to 02/2000. A notice was issued to the establishment's previous employer St. George Cashew Traders for the period from 03/1991 to 08/1997 and to the appellant for the period 09/1997 to 02/2000. The notice send to M/s. St. George Cashew Traders for the period from 03/1991 to 08/1997 was received back with postal remarks "addressee not known". Later the notice was forwarded through Enforcement Officer. On receipt of the notice, the appellant filed a statement that the notice was issued to them erroneously. A representative of the appellant attended the hearing on 18.04.2005 and stated that they had taken over the establishment in 09/1997 only and therefore he requested that the damages for the period from 03/1991 – 08/1997 may be recovered from the previous employer. It was

apprised to the representative of the appellant that as per Sec 17B of the Act, the present employer is responsible to pay liabilities in case of lease or transfer of establishment. Hence a combined notice for the period 03/1991 – 02/2000 was issued to the appellant on 17.05.2008. The appellant did not attend the enquiry. In the meanwhile the appellant challenged the notice before the Hon'ble High Court in W.P.(C) No 27007/2006. The Hon'ble High Court vide its judgement dated 10.11.2008 remanded the matter to the respondent with a direction to the appellant to present herself before the respondent authority on 10.12.2008. The respondent issued notice dated 05.02.2019 directing the appellant to show cause why damages shall not be recovered. The appellant was also given an opportunity for personnel hearing on 27.02.2019. A representative of the appellant attended the hearing and submitted that the appellant took over the establishment in 1998 and run it upto 31.08.2008. He further submitted that the establishment was sold to Sandhya Cashews on 01.09.2008 and therefore the appellant may not be held responsible for any damages and interest from 01.09.2008. The appellant did not produce any records to substantiate that she sold the factory to M/s. Sandhya Cashew on 01.09.2008.

The representative of the appellant on subsequent dates of posting submitted a copy of the purchase deal dated 20.04.1999 and sale deal dated 14.08.2010 and a copy of letter dated 10.11.2008 sent by the employer. Transfer is an agreement between the transferor and transferee. It binds neither the employees nor the PF authorities who are not parties to the transfer. Therefore the transferee cannot claim immunity from the liability accrued under any provisions of the Act as on the date of transfer. Sec 17B is a caution to the transferee to include all such liability within the consideration for the liability. After taking into account all the evidences and pleadings by the appellant, the respondent issued the impugned order. Sec 17B creates a fiction with regard to the liability of the employer, in case of transfer of an establishment. On transfer, the employer shall remain liable in relation to contribution and other sums due from the employer under any provisions of the Act. The Hon'ble High Court of Calcutta in ***Dalgoan Agro Industries Ltd Vs Union of India*** considered the liability of a transferee under Sec 17B of the Act and held that the erstwhile as well as the current employer remain responsible for liabilities under Sec 14B and 7Q as a consequence of liability being that of the establishment in

question of which employers are merely fictional representatives to facilitate recovery of dues. The above decision of the Hon'ble High Court of Calcutta was affirmed by the Hon'ble Supreme Court in ***Mcleod Russel India Limited. Vs RPFC***, 2014 (4) LLJ 309 (SC). In ***M/s. Sky Machinery Ltd. Vs RPFC***, 1998 LLR 925 the Hon'ble High Court of Orrisa held that "financial crunch will not be sufficient for waving penal damages for delay in depositing PF contributions". In ***Hindustan Times Ltd. Vs Union of India***, 1998 SCC 242, the Hon'ble Supreme Court held that financial difficulty is not a relevant explanation to avoid liability for payment of dues.

4. The establishment delayed remittance of contribution for the period from 03/1991 – 02/2000. The respondent therefore initiated action for recovery of damages, issued notice under Sec 14B of the Act and provided an opportunity to the appellant for personnel hearing. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 27006/2006 and the Hon'ble High Court of Kerala remanded the case to the respondent with a direction to provide an opportunity to the appellant to plead their case. The respondent authority initiated a fresh enquiry under Sec 14B of the Act. Issued notice to the

appellant. A representative of the appellant attended the hearing and submitted that the establishment was taken over by the appellant only on 09/1997 by virtue of various Sale Deeds from M/s. Rajan Cashew and therefore M/s. Rajan Cashew who is the employer during the period 03/1991 to 08/1997 may be held responsible for the liability of damages and interests. The representative of the appellant also submitted that the establishment is sold to Sandhya Cashews on 11.08.2010. After taking into account, the provisions of Sec 17B, the respondent authority found that the appellant is liable for remittance of damages for the period 03/1991 – 02/2000.

5. In this appeal, the learned Counsel for the appellant raised three issues.

6. The first issue is in respect of the liability of the appellant for damages and interests for the period when M/s. Rajan Cashews was running the appellant establishment. According to the learned Counsel for the appellant, the appellant purchased the establishment only on 22.04.1999 and run the same till 31.08.2008. Therefore any liability under Sec 14B and 7Q shall be fixed on M/s. Rajan Cashews. There is confusion regarding the date of taking over of the establishment by the

appellant. In Para 6.2 of the appeal memorandum it is stated that the appellant has taken over the establishment w.e.f. 09/1997. In Annexure A8 dated 21.05.2019 it is mentioned that the appellant took over the establishment only from 22.04.1999 and the liability before 22.04.1999 shall be fixed on M/s. Rajan Cashews. The learned Counsel for the respondent argued that Sec 17B of the Act clearly fixes the liability of the purchaser of an establishment under the Act. As per Sec 17B "*Liability in case of transfer of establishment:*

Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or Insurance Scheme as the case may be, in respect of the period upto the date of such transfer;

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer”.

6. The liability of the transferor under Sec 17B was considered by a Special Bench of the Hon’ble High Court of Calcutta in ***Dalgoan Agro Industries Ltd. Vs Union of India***, and held that the transferor and transferee managements remain jointly and severally liable under Sec 17B of the Act for all sums due including damages. The transferor’s liability comes to a halt on the date of transfer but includes the sums computed under both these sections till the date of transfer. The above decision was considered by the Hon’ble Supreme Court in ***Mcleod Russel India Ltd. Vs RPFC (Supra)***. The Hon’ble Supreme Court held that “where the authority is of the opinion that damages under Sec 14B need to be imposed the computation would come within the purview of Sec 14B of the Act and it would be recoverable jointly and severally from the erstwhile as well as the current management”. The Hon’ble High Court of Kerala also considered the above issue in various decisions.

1. ***P Mandakini Vs RPFC***, 2018 LLR 1260(KHC), the Hon’ble High Court of Kerala held that recovery of EPF

dues can be made from the lessee even if the lessee severs his ties with the establishment due to efflux of time.

2. In ***Komalapuram Spinning and Weaving Mills Vs APFC***, 2018 LLR, 695(Kerala DB) the Division Bench of Kerala High Court held that the liabilities contemplated under Sec 17B cannot be absolved being joint and several notwithstanding the fact that the establishment had been taken over by the State Government under Acquisition Act and subsequently transferred.
3. In ***Kunjeli Mathew Vs Enforcement Officer (Recovery)***, 2018 LIC 1275 (Ker.DB), the Division Bench of Hon'ble High Court held that the liability towards outstanding PF dues upon transfer of establishments on transferee is limited to the value of assets transferred.
4. In ***RR Cashew Exports Kollam Vs Provident Fund Commissioner***, 2016 LLR 825 (Ker.HC) the Hon'ble High Court held that Sec 17B contemplates liability joint and severally on the basis of which the PF authority can fix the liability on the purchaser who

cannot be heard to say that the liability belongs to the original owner.

7. In view of the settled legal position, the appellant cannot escape the liability of paying damages and interests from March 1991 to February 2000. The liability of the appellant from 03/1991 to 21/04/1999 is joint and several with that of M/s.Rajan cashew and from 22.04.1999 to 02/2000, the appellant is fully liable for damages and interest for belated remittance of contribution. Therefore the claim of the appellant that the liability for the relevant period shall be fixed on the previous owner has no basis in law.

8. Another ground pleaded by the learned Counsel for the appellant is that of financial difficulty. According to the learned Counsel for the respondent, the appellant failed to produce any documents to substantiate the claim of financial difficulty. Even in this appeal, the appellant did not produce any documents to prove that the appellant establishment was in financial difficulty during the relevant point of time. 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.

9. The learned Counsel further argued that there was no intentional or deliberate delay in the delayed remittance of contribution. The learned Counsel for the respondent pointed out that even the employees' share of contribution deducted from the employee is not paid in time and therefore the appellant cannot plead that there was no intentional delay in belated remittance of contribution. The learned Counsel pointed out that various

decisions of the Hon'ble Supreme Court of India and Hon'ble High Court of Kerala would show that mensrea is a relevant consideration while deciding the quantum of damages.

10. 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.

11. The learned Counsel for the respondent pointed out that no appeal is maintainable from a demand of interest 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.

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

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer