



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 3rd day of November 2021)

APPEAL No. 380/2018

Old No. ATA 391 (7) 2014

Appellant

M/s. KMLM Chits India Ltd.
Mathew Sons Trade Centre,
Kaloor – 682 017

By Adv. Bobby Augustine

Respondent

Assistant PF Commissioner,
Sub Regional Office,
Bhavishyanidhi Bhavan
Kaloor – 682 017

By Adv. S Prasanth

This case coming up for final hearing on 29.07.2021
and this Tribunal-cum-Labour Court on 03.11.2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KC/29065/
DAMAGES CELL/2014/17643 dated 05.03.2014 assessing
damages under Section 14B of EPF and MP Act (hereinafter

referred to as 'the Act') for belated remittance of contribution for the period from 04/2010 – 09/2013. Total damages assessed is Rs.4,56,969/-(Rupees Four lakh fifty six thousand nine hundred and sixty nine only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant is an establishment registered under companies Act. The respondent issued a notice under Sec 7A of the Act to assess dues for the period from 04/2010 – 09/2013. The appellant remitted the entire amount of Rs.12.5 lakhs in September 2013. The delay in remittance of Provident Fund contribution was not wilful and it was due to the delay in obtaining the code number. The appellant received a summons dated 24.12.2013 directing the appellant to show cause why damages under Sec 14B and interest under Sec 7Q shall not be levied for belated remittance of contribution. A true copy of the summons dated 24.12.2013 is produced and marked as Annexure A1. The respondent authority did not consider the submissions made by the appellant before him at the time of hearing.

Since the enactment of Chits Act, the profit earned by the appellant is reduced and the appellant was facing serious financial crisis. Even the arrears of wages of the employees are yet to be paid because of the financial constraints. The impugned order is issued in a mechanical way and there is no application of mind by the respondent authority. The respondent authority failed to consider the authoritative judgement of the Hon'ble High Court of Kerala in **Indian Telephone Industries Limited Vs APFC** 2006 (3) KLJ 698. The respondent authority ought to have considered the financial position of the appellant company while issuing the impugned orders. The respondent failed to exercise the discretion available to him under Sec 14B of the Act.

3. The impugned order is issued in the year 2014 and this appeal is filed before EPF Appellate Tribunal, New Delhi in the same year. The respondent was given more than adequate opportunity to file its written statement even after transferring the file to this Tribunal. The respondent authority was directed to file written statement, if any on or before 13.02.2020. The respondent failed to file any written

statement even after seven years of filing the appeal. After transfer of the files from EPF Appellate Tribunal, New Delhi, this tribunal issued notice to the appellant. The appellant acknowledged the receipt of the summons but failed to appear before this Tribunal. Considering the fact that there was undue delay, it was decided to dispose off the matter on merit.

4. The appellant has taken basically two grounds in this appeal. One is with regard to delayed allotment of code number. The appellant however failed to furnish any details regarding the delayed allotment of code number in this appeal. However it is appropriate to point out that code numbers are allotted to the establishments as an administrative requirement to regulate compliance. The same is not mandated by the provisions of the Act or the Schemes thereunder. It is a settled legal position that the Act, acts on its own force and it is the responsibility of the appellant to ensure the remittance of contributions in respect of its employees in time. The 2nd ground pleaded by the appellant is with regard to financial difficulty. The

appellant failed to produce any documents to substantiate the financial difficulty of the appellant during 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.

5. Having failed to substantiate the claim of financial difficulty, the appellant cannot claim any relief

under Sec 14B of the Act. The learned Counsel for the respondent pointed out that the appellant has no claim that the wages of the employees were not paid in time by the appellant establishment during the relevant period. When wages of the employees are paid, the employee's share of contribution is deducted from the salary of the employees. Non-remittance of employee's share of contribution deducted from the salary of the employee's is a criminal 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 contribution.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order under Sec 14B of the Act.

7. 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.

8. Hence the appeal against Sec 14B order is dismissed as there is no merit. Appeal against 7Q order is dismissed as the same is not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer