



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

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

(Thursday the, 24th day of March 2022)

APPEAL No. 392/2018

(Old No. ATA.510(7)2014)

Appellant : The District Project Officer
Sarva Shiksha Abhiyan
Thiruvananthapuram – 695 033

By Adv. Jogy Scaria

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
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 24.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/26357/RO/TVM/PD/2014/9359 dated 04.03.2014 assessing damages under Sec 14B of EPF and MP Act 1952 (hereinafter referred to

as 'the Act') for belated remittance of contribution for the period from 07/2003 – 02/2012. The total damages assessed is Rs. 41,93,312/- (Rupees Forty one lakh ninety three thousand three hundred and twelve only). The appellant is also challenging a recovery demand notice in CP 1 issued by the Recovery Officer.

2. The appellant is the state implementing society of Ministry of Human Resource Development, Government of India. The activities of the appellant started from 2003. The provisions of the Act are extended to the appellant w.e.f 01.07.2003, during 2010, after a lapse of 7 years. The respondent recovered the dues by attaching the bank account of the appellant. The respondent authority initiated further action for levy of interest and levy of damages and interests. From 02/2010, the appellant establishment is regular in compliance. The funds for the project are provided for specific activities as approved in the annual work plan budget in Government of India. There was no wilful defiance of law or laches on the part of the appellant. The respondent authority failed to consider the fact that the delay in remittance was due to the delay in allotting code number to the appellant establishment by the respondent. Penalty cannot be

saddled on somebody who is not guilty. The respondent did not consider the fact that the provident fund dues were recovered by the respondent by attaching the bank account of the appellant and there is no justification for demanding further damages for delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act from 01.07.2003 on 07.01.2011. The respondent was forced to cover the appellant establishment from a retrospective date as the appellant failed to start compliance from the due date of coverage. There was delay in remittance of contribution for the period from 07/2003 to 02/2012. The respondent therefore initiated action for assessment of damages vide notice dated 20.08.2013. A detailed month wise delay statement was also forwarded along with the notice. The appellant was given an opportunity for personnel hearing on 25.09.2013. The district project officer attended the enquiry and pleaded that there was delay in remittance of contribution since the appellant establishment is covered retrospectively. The appellant establishment failed to remit the contribution even

after coverage notice is issued to the appellant. Hence the respondent authority initiated action for assessing the dues under Sec 7A of the Act. While issuing the order under Sec 7A, the appellant was directed to remit the contribution within 15 days of the receipt of the notice. Since the appellant failed to remit the contribution, the same was recovered from the bank account of the appellant by issuing an order to the bank under Sec 8F of the Act. The non-remittance of contribution in time cannot be ignored by the respondent. The respondent was forced to cover the appellant establishment from a retrospective date as the appellant failed to start compliance on their own from the date it was statutorily coverable. Hence retrospective coverage cannot be taken as a ground for delayed remittance of contribution. The respondent authority assessed damages as per Para 32A of EPF Scheme. The Division Bench of Hon'ble High Court of Bombay in ***Union of India Vs Super Processors***, 1993 (1) CLR 457, as well as ***Navnilal K Shah Vs Union Of India***, 2004 (100) FLR 146 (Bom) held that the amended Scheme provisions shall be applied while imposing damages on a defaulted establishment. The impugned order was issued after

following the due process and affording adequate opportunity to the appellant to submit their case. The financial reservoir for the distribution of benefits is filled by the employer collecting by deducting from the worker's wages, completing with his own equal share and duly making over the gross sums to the fund. If the employer neglects to remit or divert the money for alien purposes, the fund gets dry and the retirees are denied the meagre support when they most need it. The Hon'ble Supreme Court of India in ***Chairman SEBI Vs Sri Ram Mutual Fund***, 2006 (5) SCC 361, held that mensrea is not an essential ingredient for contravention of provisions of a civil Act. Hence the intention of parties in delayed remittance of contribution is not a relevant consideration while quantifying the damages under Sec 14B of the Act.

4. The appellant challenged the order dated 04.03.2014 issued by the respondent authority under Sec 14B of the Act and also the recovery notice dated 21.05.2014 issued by the Recovery Officer under Sec 8 of the Act. It is clarified that no appeal is maintainable from the recovery action initiated by the Recovery Officer of the respondent organisation by issuing the

demand notice in CP(1). Hence the appeal against the recovery notice dated 21.05.2014 is not maintainable.

5. According to the learned Counsel for the appellant, the appellant organisation is the implementation agency for a centrally sponsored Scheme in partnership with the state Government. Sarva Siksha Abhiyan (SSA) provides for a variety of interventions including opening of new schools and alternative schooling facilities, construction of schools and additional classrooms, toilet and drinking water etc. The project is implemented by District Project Officers at every district level. SSA has been wound up and a new agency namely Samagra Siksha Keralam came into existence. The respondent authority covered the appellant establishment w.e.f 01.07.2003 in 2010. The respondent authority further assessed an amount of Rs.80,22,072/- under Sec 7A of the Act for the period from 07/2003 to 12/2010. The assessed amount was recovered by attaching the bank account of the appellant. The respondent authority now issued a notice for assessing damages and interests for belated remittance of contribution. A representative of the appellant attended the hearing and submitted that the

delay in remittance of contribution was due to the delayed allotment of code number. It was also pleaded that there was no intentional delay in remittance of contribution.

6. The learned Counsel for the respondent pointed out that the assessment of interest under Sec 7Q cannot be challenged in the appeal under Sec 7(I) of the Act. He further pointed out that the appellant establishment was required to start compliance when the statutory requirements under Sec 1(3)(b) of the Act is satisfied. Since the appellant failed to start compliance, the respondent was compelled to issue the coverage notice, assess the dues and recover the same from the appellant. The same cannot be taken as an excuse for delayed remittance of contribution.

7. The appellant establishment was covered under the provisions of the Act w.e.f 01.07.2003 on 07.01.2011. According to the learned Counsel for the appellant, the delay in remittance of contribution was only due to the delayed allotment of code number. According to the learned Counsel for the respondent, it is the responsibility of the appellant to come forward and start compliance once the statutory requirements are met. The

provisions of the Act, acts on its own force. Hence it is for the appellant to start compliance from the date, the requirements of Sec 1(3)(b) are met. Allotment of code number is not a statutory obligation and it is done only for as an administrative requirement to identify an establishment. Accordingly retrospective allotment of code number cannot be pleaded as a ground for delayed remittance of contribution. The Hon'ble High Court of Delhi in ***M/s. Ajanta Offset and Packaging Ltd. Vs RPFC New Delhi***, 2004 LIC 2261, examined the above issue. In that case the appellant applied for a code number but there was delay in allotment of code number and consequent delay in remittance of contribution. The plea of the management that there was negligence on the part of provident fund authorities and therefore the management is not liable to pay damages is held to be unsustainable by the Hon'ble Court. The Hon'ble High Court of Madras also examined the issue in ***Ujwal Transport Agency Vs Union of India***, 1998 2 LLJ 833, and held that non-payment of contribution due to non-allotment of code number is a default within the meaning of Sec 14B and therefore will attract damages under Sec 14B of the Act. One of

the ground pleaded by the appellant in that case also is delayed allotment of code number for delayed remittance of contribution.

8. The learned Counsel for the appellant also pleaded that the delayed remittance of contribution was not intentional. The Hon'ble Supreme Court considered the issue whether the intention of parties is relevant while levy in damages in a recent decision. 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.

9. The appellant is a project sponsored by the Central and State Governments and provided for variety of interventions for enhancement of primary education in the country. Though the grounds pleaded by the appellant for delayed remittance of contribution is not legally acceptable, the appellant establishment is entitled for some relief taking into account the financial position of the appellant establishment and also the retrospective coverage.

10. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the

damages assessed under Sec 14B of the Act. As already pointed out, the recovery action under sec 8 of the Act and also the interest demanded under Sec 7Q of the Act cannot be challenged in this appeal as there is no provision under Sec 7(I) to challenge those orders.

Hence the appeal is partially allowed, the impugned order under Section 14B of the Act is modified and the appellant is directed to remit 60% of the damages.

Sd/-
(V.Vijaya Kumar)
Presiding Officer