



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

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

(Wednesday the, 19th day of January 2022)

APPEAL No. 403/2019

(Old No. ATA.1386(7)2015)

Appellant : M/s Kerala State Co-operative
Coir Marketing Federation Ltd.
Regional Office, P.B.No. 255
Jew Town, Mattancherry
Ernakulam – 682 002

By Adv. Suraj.S

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan
Kaloor, Kochi – 682 017.

By Adv. S Prasanth

This case coming up for final hearing on 08.10.2021 and this
Tribunal-cum-Labour Court on 19.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KCH/
4681/DAMAGES CELL/PJT/2015 dated 12.10.2015 assessing
damages under Section 14B of EPF and MP Act (hereinafter

referred to as 'the Act') for belated remittance of contribution from 04/2010 to 11/2013. The total damages assessed is Rs.1,87,824/- (Rupees one lakh eighty seven thousand eight hundred and twenty four 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 the Apex body of 628 primary Coir Co-operative Societies spread all over Kerala. The main objective of the federation is the procurement of the entire produce of the member societies and marketing the same through its sales outlet. It is estimated that around 20 lakh people are indirectly supported by this industry. The appellant is instrumental in implementing the Schemes of Government of Kerala like Distress purchase scheme, Fibre subsidy scheme, Price fluctuation fund, Purchase price stabilization Scheme etc. The main source of working capital was the cash credit facility from NABARD and the cash credit facility from Kerala state Co-operative Bank Ltd. From the year 2004 – 2005 onwards NABARD has not sanctioning any cash credit facility to the appellant. This affected the financial position of the appellant establishment and severe shortage of working capital. Due to acute financial crisis, the appellant could not pay

the amounts due to the financiers. Even after implementation of rehabilitation proposals, there was no much improvement in the financial position of the appellant establishment. The Government also provided working capital assistance to the appellant. Since the financial position did not improve, the properties of the appellant were put to sale by Kerala State Co-operative Bank Ltd. Due to the financial crisis, explained above, there was some delay in remittance of Provident Fund contribution. This delay is not intentional or due to any laps or omission. The priority for appellant was to pay wages to the employees. There was no wilful default or contumacious conduct on the part of the appellant in delayed remittance of contribution. The appellant received a notice dated 09.04.2014 proposing levy of damages and interests for delayed payment of Provident Fund contribution for the period from 04/2010 – 11/2013. Without considering the real facts, the respondent issued the impugned order, a copy of which is produced and marked as Annexure 1. Penalty cannot be saddled on somebody who is not guilty. The respondent ought to have taken the mitigating factors into account. It is a settled position of law that damages cannot be imposed unless there is wilful delay

and mensrea on the part of the appellant. There was no wilful defiance of law or latches on the part of the appellant. The appellant failed to exercise the discretion available to him under Sec 14B of the Act. The Hon'ble Supreme Court in ***Employees State Insurance Corporation Vs HMT Ltd***, AIR 2008 SC 1322, held that the existence of mensrea or actusreus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages.

3. Respondent filed counter denying above allegations. The appellant establishment defaulted in payment of contribution during 04/2010 - 11/2013. Any belated remittance of contribution will attract damages under Sec 14B of the Act. The respondent therefore issued notice dated 09.04.2004 directing the appellant to show cause with documentary evidence as to why penal damages shall not be levied for belated remittance of contribution. A detailed damages statement showing the month wise details of belated remittance was also annexed along with the notice. The appellant was also given an opportunity for personnel hearing on 04.06.2014. A representative of the appellant attended the hearing and filed a written statement dated 02.06.2014. On

the request of the appellant, the enquiry was adjourned to 13.08.2014. There was no representation for the appellant. The enquiry was further adjourned to 18.11.2014 with notice to the appellant. As per the written statement filed by the appellant, the appellant establishment was facing financial crisis which developed to the extent of delayed payment of salary and wages, which delayed the remittance of Provident Fund contribution. The respondent authority noticed that the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Accordingly the respondent issued the impugned order. The appellant cannot ignore the statutory liability cast upon him as an employer under Paras 30 and 38 of EPF Scheme to remit the monthly contribution payable under various accounts within 15 days of close of every month. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979(2) LLJ 416, held that the reason for the introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contributions to the fund most often with the ulterior motive of misutilising not only their own, but also their employees contribution. The Hon'ble Supreme

Court also held that the pragmatics of the situation is that if the stream of contribution were frozen by employers default, after due deduction from the wages and diversion for their own purposes the scheme would be damnified by traumatic starvation of fund and public frustration from the failure of the project. The appellant has absolutely no justification for delaying the employees' share of contribution deducted from the salary of the employees. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, held that imposition of penalty become a sine qua non of the violation and has held that no excuse from the employer can be entertained in civil liability cases. The Hon'ble High Court of Calcutta in **Employees Provident Fund Organisation and Another Vs Birlapur Vidhyalaya and Others**, 2007 (1) CHN 173 held that the contribution, both the employees and employers share, becomes payable as soon the wages become payable or due and not on actual payment. The Hon'ble High Court also held that to allow the employer to make contribution only when he pays the wages would only encourage the employers to delay contribution sometimes on justifiable grounds and most often on unjustifiable grounds.

4. There is no dispute regarding the fact that there was delay in remittance of contribution during the period from 04/2010 to 11/2013. The respondent therefore initiated action for assessing damages under Sec 14B and interest under Sec 7Q of the Act. The respondent issued notice along with a detailed delay statement. The appellant was also given innumerable opportunities to appear and produce records. The appellant filed a written statement claiming financial difficulty as a reason for delayed remittance of contribution. After considering the submissions and written statements made by the appellant, the respondent issued the impugned orders.

5. In this appeal, the learned counsel for the appellant pointed out that the working capital of the appellant was the cash credit facility given by NABARD and Kerala State Co-operative Bank Ltd. According to him, NABARD stopped cash credit facility from 2004-2005 and thereafter the appellant establishment was pushed into financial constraints and difficulties. He also argued that there was delay in payment of wages to the employees. According to the learned Counsel for the respondent, the cash credit facility was stopped by NABARD in the year 2004 – 2005

and the appellant establishment cannot claim the same as a reason for delayed remittance of contribution for the period from 04/2010 to 11/2013. Though the learned Counsel for the appellant pleaded financial constraints and delay in payment of wages, no documents, whatsoever, is produced by the appellant before the respondent authority. The appellant failed to produce any documents in this appeal also to examine whether there is any mitigating circumstance that warrants interference by this Tribunal. 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.

5. The learned Counsel for the appellant also argued that there was no intentional delay in remittance of Provident Fund contribution and there was no mensrea or actusreus in delayed remittance of Provident Fund contribution. He relied on various decisions of the Hon'ble Supreme Court of India and also Hon'ble High Court of Kerala. 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.

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

7. The learned Counsel for the respondent pointed out that an order issued under Sec 7Q of the Act cannot be challenged in

Appeal under Sec (I) 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.

Hence the appeal filed against Sec 14B order is dismissed as there is no merit in the appeal. The appeal against the order under Sec 7Q is dismissed as not maintainable.

Sd/-
(V.Vijaya Kumar)
Presiding Officer