



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 18th day of November 2021)

APPEAL No.405/2019

Old No. ATA 414 (7) 2016

Appellant : M/s. Kerala Kaumudi Private Ltd.
P.B.No. 77, Pettah
Thiruvananthapuram – 695 024

By Adv. Ajith S Nair

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Ajoy P.B

This case coming up for final hearing on 12/08/2021
and this Tribunal-cum-Labour Court on 18/11/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/138/RO/TVM/
PD/2015 dated 19.11.2015 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

03/2008 – 02/2009. Total damages assessed is Rs. 8,04,670/- (Rupees eight lakh four thousand six hundred and seventy 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 a news paper establishment engaged in the business of publishing dailies and other periodicals. The appellant establishment was facing acute financial crisis due to various reasons. The fluctuation in the prices of news print badly affected the financial stability of the appellant. The circulation has also not expanded as expected. The company was finding it difficult to meet day to day affairs of the company during the period 2008-09. The salary of the employees were also in arrears. The appellant delayed the wages of employees and contributions were paid as and when the wages were paid to the employees. The appellant issued notice alleging delay in remittance. The appellant replied the circumstances leading to the delay in remittance. The respondent authority without considering the circumstances passed an order directing the appellant to remit the damages. The said order dated 18.01.2010 was challenged before the

Hon'ble EPF Appellate Tribunal as ATA No. 73(7)2010. The Hon'ble Tribunal passed order dated 13.01.2011 remanding the matter for fresh disposal. Without issuing any further notice, the respondent issued an order imposing damages. The said order was also challenged before the EPF Appellate Tribunal in ATA No. 883(7)/2011. The Hon'ble Tribunal found that there is serious lacunae in the said order and set aside the same and remanded for fresh decision. The respondent accordingly issued notice to the appellant. The appellant appeared before the respondent and explained the delay caused in remitting the contribution. The respondent accepted the factum of financial difficulty of the appellant. However the respondent issued the impugned order in a mechanical way. The respondent authority having found that there are serious issues in the printing media ought to have reduced or waived damages. The respondent organisation has not sustained any damages due to the delayed remittance of contribution. The Hon'ble High Court of Kerala held that mensrea is a must for imposing damages and further held that financial difficulties are mitigating circumstances.

3. The respondent filed counter denying the above allegations. The appellant delayed payment of statutory dues under the Act for the period from 03/2008 – 02/2009 which attracted levy of damages under Sec 14B of the Act. The order issued by the respondent authority was set aside by the EPF Appellate Tribunal, New Delhi vide its order dated 17.05.2013 on the ground that no notice was issued to the appellant before assessing the damages. In compliance with the directions of the EPF Appellate Tribunal, the respondent authority issued fresh notice to the appellant. The enquiry was held on 19.08.2015, 10.09.2015, 06.10.2015 and 26.10.2015. The appellant was represented in the enquiry. The delay statement send along with the summons was not disputed by the appellant. The representative of the appellant submitted that the delay in remittance of provident fund contribution was not deliberate and was due to the financial difficulty faced by the print media. The claim of the appellant that there is no intentional delay in remitting the contribution is denied. The appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time. The Hon'ble Supreme Court of India in

Chairman, SEBI Vs Sriram Mutual Fund, AIR 2006 SC 2287 held that mensrea is not an essential ingredient for the contravention of the provisions of civil Act. The financial difficulty faced by the appellant was not proved before the respondent authority and no documents whatsoever was produced before the respondent authority. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (4) SCC 573 considered whether financial difficulty can justify the delayed remittance of contribution. The Hon'ble Supreme Court held that "even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. Besides 50% of the contributions deposited late represented the employee's share which had been deducted from employees' wages and was a trust money with the employer for deposit in the statutory fund. The delay in deposit of this part of contribution amounted to breach of trust and does not entitle the employer to any consideration for relief".

4. Admittedly there was delay in remittance of contribution by the appellant establishment. The respondent authority therefore initiated action under Sec 14B read with Para 32A of EPF Scheme to assess damages for belated remittance. In the first round of litigation, the order issued by the respondent authority was set aside by the EPF Appellate Tribunal holding that no notice was issued to the appellant and the matter was remitted back to respondent for re-consideration. The respondent authority issued fresh notice to the appellant providing adequate opportunity and thereafter issued the impugned order.

5. The contention of the learned Counsel for the appellant is that the delay in remittance was due to financial constrains of the appellant establishment because of the rise in cost of newsprint and other reasons. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the respondent authority to substantiate their case of financial difficulty. The respondent authority in the impugned order has specifically stated that “the employer has not submitted any documentary evidence to

support his argument that the establishment has been undergoing financial difficulty or the establishment was on continuous loss". The appellant failed to produce any document even in this appeal to support the claim of financial difficulty. 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.

6. Another ground pleaded by the learned Counsel for the appellant is that there was no mensrea in belated remittance of contribution. It was also pleaded that there was delay in payment of wages to the employees and consequently there was delay in remittance of Provident Fund also. Again the appellant failed to prove their claim that there was delay in payment of wages to the employees and therefore it cannot be accepted. The learned Counsel for the respondent pointed out that mensrea is not a relevant consideration while assessing damages under Sec 14B of the Act. 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 decided 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.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order. The learned Counsel for the

respondent submitted that the appeal against 7Q order is not maintainable. 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 Sec7Q 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 in the appeal. Appeal against 7Q order is dismissed as the same is not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer