



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the, 29th day of November 2021)

APPEAL No. 421/2019 & 422/2019

Appellant M/s. Travancore Rubber & Tea
Company Ltd.
Mundakayam.P.O.
Kottayam – 686 513.

By M/s. Joseph & Kuriyan

Respondent The Regional PF Commissioner
EPFO, Sub Regional Office,
Thirunakkara
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 01.09.2021 and
this Tribunal-cum-Labour Court on 29.11.2021 passed the
following:

ORDER

Appeal No.421/2019 is filed against order No. KR/
KTM/106/APFC/Penal Damage/14B/2019-2020/2992 dated,
30.07.2019 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 08/2016 to 01/2019 (remittance of dues between 20.08.2016 and 31.03.2019). Total damages assessed is Rs. 1,34,311/-. The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

Appeal No.422/2019 is filed against order No. KR/KTM/ 315/APFC/Penal Damage/14B /2019-2020/2102 dated 11.07.2019 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 04/2018 to 01/2019 (remittance of dues between 30.09.2018 & 31.03.2019). Total damages assessed is Rs. 1,53,427/-. The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

Since common issues are raised in both the appeals, the appeals are heard together and disposed of by a common order.

2. The appellants are estates belonging to M/s. Travancore Rubber and Tea Company Ltd, a company registered under the Companies Act. The appellants are

covered under the provisions of the Act. The appellants are engaged in productions and sale of rubber and other related products. There was some delay in remittance of Provident Fund contribution. The respondent issued show cause notices directing the appellants to show cause why damages under Sec 14B of the Act read with Para 32A of EPF Act shall not be levied for belated remittance of contribution. The appellants were also given an opportunity for personnel hearing. The appellants were advised to appear before the respondent authority. The appellants could not attend the hearing on that day in view of the labour agitation in the plantation. Further the appellants could not inform the respondent the situation prevailing in the estate. The delay on the part of the appellants was not deliberate and the same was on account of acute paucity of funds. The rubber industry as such was facing financial crisis during the relevant point of time. Further the Rajamanickam report, questioning the ownership of the appellants over its land, also created a lot of adverse circumstances including restrictions on agricultural operations and felling of trees for re-plantation of the same. The

respondent authority issued the impugned orders without hearing the appellants. The respondent failed to consider the fact that there was no element of mensrea on the part of the appellants in delayed remittance of contribution. In ***Employee State Insurance Corporation Vs HMT Ltd***, 2008 (3) SCC 35, the Hon'ble Supreme Court held that existence of mensrea or actusreus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages. The respondent failed to consider the mitigating circumstances of the appellant establishments. In ***Sree Kamakshy Agency Pvt. Ltd. Vs EPF Appellate Tribunal and another***, 2013 (1) KHC 457 the Hon'ble High Court of Kerala held that the authorities under Sec 14B of the Act shall see whether there is a deliberate intention by the employers to withhold the Provident Fund money.

3. Respondent filed counter denying the above allegations. The appellants delayed remittance of contribution and therefore the respondent initiated action for assessing damages under Sec 14B of the Act read with Para 32A of EPF Scheme. Notices were issued to the appellants along with a

delay statement. The appellants failed to attend the enquiry or produce any documents in support of their claims. In ***Calicut Modern Spinning and Weaving Mills Vs RPFC***, 1982 LAB IC 1422, the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions in the first instance. An opportunity for personnel hearing was also given. Despite the receipt of notice, the appellants failed to attend the enquiry and failed to produce any materials in support of financial difficulty. The pleading of financial difficulty is without any documentary evidence or any explanation to the effect that the financial difficulty was due to the reasons beyond the control of the appellants. In ***Chairman SEBI Vs Sri Ram Mutual Fund***, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not a relevant consideration while assessing penalty or damages in cases of civil obligation.

4. The learned Counsel for the respondent pointed out that no appeal is maintainable under Sec 7(I) from an order

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.

5. In view of the above legal position the appeals against 7Q orders are dismissed as not maintainable.

6. The learned Counsel for the appellants pointed out that the appellants establishments were prevented from attending the proceedings under 14B before the respondent authority in view of the agitation by the employees of the appellants establishments. Due to the same reason, they could

not seek any extensions of time also. It is seen that the respondent authority has given the appellants two opportunities before the impugned orders under Sec 14B are issued. The main ground pleaded by the appellants in these appeals are that of financial difficulty and lack of mensrea in belated remittance of contribution. The question regarding mensrea is finally decided by 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. The other issue raised with regard to financial difficulty it was pointed out that the appellants could not produce any documents to substantiate the claim of financial difficulties since the authorised representatives of the appellant establishments were prevented from attending the hearing due to labour agitation. Since Sec 14B of the Act is a penal provision it is felt that the appellants can be given an opportunity to substantiate their financial difficulties before the respondent authority.

7. Considering the facts, pleadings and arguments in these appeals, I am not inclined to accept the impugned orders issued by the respondent under Sec 14B of the Act.

8. Hence the appeals against Sec 7Q orders are dismissed as not maintainable. The appeals against 14B of orders are set aside and the matter is remitted back to the respondent to re-assess the damages within a period of six months after issuing notice to the appellants. If the appellants fail to appear or produce the records called for, the respondent is at liberty to decide the matter according to law.

Sd/-

(V.Vijaya Kumar)
Presiding Officer