



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the, 10th day of March 2022)

APPEAL Nos. 426/2019(Old No. ATA 453(7)2016),
85/2021 & 86/2021

Appellant : M/s. Kerala State Bamboo Corporation
P.B.No. 20, Angamaly South,
Ernakulam – 683 573

By M/s. B.S.Krishnan Associates

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

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 02.02.2022 and this Tribunal-cum-Labour Court on 10.03.2022 passed the following:

ORDER

Appeal No. 426/2019 is filed from order No. KR/KCH/3341/DAMAGES CELL/2016/178 dated 24.02.2016 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 06/1996 to 07/2010. The total damages assessed

is Rs. 4,01,025 (Rupees Four lakh one thousand and twenty five only). The interest demanded under Sec 7Q of the same period is also being challenged in this appeal.

Appeal No. 85/2021 is filed from order No. KR/KCH/3341/DAMAGES CELL/PVJ/2015/17124 dated 12.02.2016 assessing damages under Section 14B of EPF and MP Act for belated remittance of contribution for the period from 07/2014 – 01/2015. The total damages assessed is Rs. 90,761/- (Rupees Ninety thousand seven hundred and sixty one only).

Appeal No. 86/2021 is filed from order No. KR/KCH/3341/DAMAGES CELL/2016/179 dated 24.02.2016 assessing damages under Section 14B of EPF and MP Act for belated remittance of contribution for the period from 02/2008 – 06/2013. The total damages assessed is Rs. 7,89,707/- (Rupees Seven lakh eighty nine thousand seven hundred and seven only).

2. The appellant is a Government company constituted for the welfare of traditional bamboo workers by undertaking manufacture and marketing of various bamboo products. It is run on a no profit/no loss basis. The appellant is covered under the provisions of the Act. The respondent issued notices to show cause why damages shall not be recovered for belated remittance

of contribution. The manager of the appellant company attended the hearing and submitted all the relevant records from which it could be seen that the respondent have already been levied damages and interest for the period 06/1996 and 05/2001 to 09/2007. The appellant also submitted a written statement dated 06.05.2014 explaining the anomalies with regard to the repetition of demand for the same period. It was also pointed out that the appellant establishment was in loss for several years and had an accumulated loss of Rs. 29.66 crores as in the financial year 2013. Government of Kerala has issued directions for referring the appellant establishment to Board for Industrial Finance and Reconstruction (BIFR) in order to declare it as a sick unit. The written statement filed by the appellant is produced and marked as Annexure-1. The Government decision to refer appellant to BIRF is produced and marked as Annexure-2. Ignoring the contentions of the appellant, the respondent issued the impugned orders assessing damages and interests. After verifying the records, the respondent authority has decided to exclude the damages and interests for 06/1996 and 05/2001 to 09/2007. However while issuing the order, the respondent authority again demanded damages and interest for the above period.

Subsequently the respondent issued another notice dated 19.03.2015. A representative of the appellant attended the hearing and pointed out that there is a repetition of demand for the period 02/2008, 09/2010 and 02/2012. The respondent issued order assessing damages and interests ignoring the contentions of the appellant. Though the orders stated that the damages and interest for the period 02/2008, 09/2010 and 02/2012 have been revised, no such revisions are reflected in the concerned order. The respondent further issued a notice dated 10.09.2015 for levying damages for belated remittance of contribution for the period from 07/2014 – 01/2015. The appellant pleaded financial difficulty which was ignored by the respondent while issuing the impugned orders demanding damages and interests. As already pointed out, the delay in remitting contribution was not deliberate. The respondent authority ought to have taken the various factors including the financial stringency of appellant establishment. Even though the liability to pay contribution is statutory, to hold that the delay automatically attracts damages could not be the correct interpretation of the provision of the Act, in view of various decisions of the Hon'ble High Court of Kerala and Hon'ble Supreme Court.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant challenged six orders of assessment of damages for different periods in this appeal. It is in violation of Rule 10 of EPF Appellate Tribunal (Procedure) Rules, 1997. According to Rule 10, “an appeal shall be based upon a single cause of action and seek one or more reliefs provided that they are consequential to one another”. In the present appeal, the appellant has challenged six orders with different cause of action and therefore the appeal is not maintainable under Rule 10 of EPF Appellate Tribunal (Procedure) Rules 1997.

4. The appeal against 7Q orders are not maintainable under Sec 7(I) of the Act. The appellant is a chronic defaulter. Even the employees’ share of contribution deducted from the wages of the employees’ are not remitted with the respondent in time. As per records of the respondent’s office, there are seven spells of delayed remittance of contribution for which action under Sec 14B was initiated. The damages and interests for the month 06/1996, 05/2001 to 09/2007 had already been assessed. Therefore the above period is excluded from the present assessment. Mere reference to BIFR will not give any protection to

the appellant establishment as the statutory requirements are not met. The financial hardship pleaded by the appellant is not a justifiable ground for reduction or waiver of damages. The Hon'ble High Court of Gujarat in **C.P. Kotak Balmandir Vs Regional Provident Fund Commissioner and another**, SCA No 3749/2011 held that mere existence of financial hardship is not sufficient explanation for delay in payment under the Act, unless it is also shown that no salaries were not paid to employees and consequently no deductions were made during the relevant period. The impugned order under Sec 14B does not include damages or interest for 6/1996 and 05/2001 to 09/2007. Summons sent to the appellant to attend the enquiry under Sec 14B on 07.05.2014 was not responded by the appellant. However on 09.05.2014, a representative appeared before the respondent authority and produced relevant records. On verification, it was noticed that the dues reflected in the notice against 02/2008 is actually damages remitted as per order dated 02.07.2010 and hence it was excluded from the assessment of damages. Further damages and interests were revised according to the bank seal as it was noticed that the date of remittance of dues as per notice differed from the bank seal. Further it was noticed that as per the bank seal, the dues for

the month of 09/2010 was remitted in time. It is also seen that the dues reflected against 01/2012 actually pertains to 02/2012 and the damages for these months were excluded and revised. The revised order dated 24.02.2016 was issued for the period from 02/2008 – 06/2013. No damages were levied for the month 02/2008 as the employer remitted the contribution in time. For the months of 09/2010 and 02/2012, necessary revision has been made based on the chalan submitted by the appellant. With regard to the payment for 02/2012 the delay shown in the notice was 124 days and the same has been revised to 94 days. A corrigendum to this effect was issued to the appellant, a copy of which is marked as Exhibit-R1. For the notice sent to the appellant, for the delay in remittance for the period from 07/2014 to 01/2015 there was no dispute on the side of the appellant and accordingly the damages and interests were issued as per the impugned order.

5. The learned Counsel for the respondent raised two preliminary issues. One is with regard to the multiple orders being challenged in a single appeal in view of Rule 10 of EPF Appellate Tribunal (Procedure) Rules. When the matter was taken up for hearing, the learned Counsel for the appellant sought

permission of this Tribunal to split the appeal into three separate appeals as otherwise the other appeals will be hit by limitation. The learned Counsel for the appellant accordingly filed Appeal Nos. 85/2021 and 86/2021. Therefore all the appeals were taken together and disposed of by a common order.

6. Another preliminary objection raised by the learned Counsel for the respondent is with regard to the appeals from orders demanding interest under Sec 7Q of the Act. According to the learned Counsel, there is no provision to challenge an order under Sec 7Q demanding interest under Sec 7(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.

7. Coming to the merits of the case, the learned Counsel for the appellant raised dispute regarding assessment of damages on the ground that there is repetition or overlap in periods of assessment. The learned Counsel for the respondent clarified in detail that there is no overlap in periods and wherever it is found that the remittances are made in time, the same is excluded from the assessment orders. Hence there is no serious dispute regarding the said issue.

8. The learned Counsel for the appellant pointed out that the delay in remittance of contribution was due to the financial constraints of the appellant establishment. He pointed out that the accumulated loss of the appellant company during the financial year 2012 – 2013 was Rs. 29.66 crores. He also pointed out that vide Annexure 2 letter dated 16.04.2013, Government of Kerala has taken a decision to refer the appellant company to BIFR since the accumulated loss of the company exceeded the net worth of the company. As per Annexure 2, the accumulated loss of the company is 2215.43 lakh and net worth of the company is - 1229.83 lakh as on 2009 – 2010. According to the learned

Counsel for the respondent, these figures may be on the basis of the balance sheet of the appellant establishment and the financial health of the appellant establishment cannot be decided on the basis of the figures reported in the balance sheet. The Hon'ble Supreme Court in ***Management of Trichinoppilly Mills Vs National Cotton Textile Mills Workers Union***, AIR 1960 SC 1003, held that the balance sheet figures does not by itself prove the financial status and the figures in the balance sheet will have to be proved by independent evidence by the company by giving an opportunity to the other side to contest the correctness of such evidence. According to the learned Counsel for the appellant, the appellant establishment is a Government company and the figures as reflected in Annexure 2 communication can be relied on for deciding the financial position of the appellant establishment. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in ***Standard Furniture Vs The Registrar, EPF Appellate Tribunal***, Writ Appeal No 996/2015, ***RPFC Vs Harrissons Malayalam Ltd.*** Writ Appeal No 241/2012 and ***Kuttanad Rubber Company Ltd Vs EPF Appellate Tribunal***, WP(C) No 15725/2010 to argue that the financial constraints of the appellant establishment is a ground for reducing

or waiving damages under Sec 14B of the Act. The learned Counsel for the appellant also relied on the decision of the Hon'ble Supreme Court in ***Hindustan Steel Ltd. Vs State of Orissa***, Civil Appeal Nos. 883-892/1966, ***Employee State Insurance Corporation Vs HMT Ltd and Others***, AIR 2008 SC 1322, ***Mcleod Russel India Ltd. Vs RPF***, AIR 2014 SC 2573 and ***Assistant PF Commissioner Vs The Management of RSL Textiles India Private Ltd.***, AIR 2017 SC 679 to argue that mensrea is a relevant consideration while deciding the quantum of damages. 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 learned Counsel for the respondent pointed out that the appellant has no case that there was delay in payment of wages to its employees. When the wages of the employees are paid, the employees' share of contribution is deducted from the salary of the employees. Non-payment of employees' share of contribution deducted from the salary of the employees in time is an offence of breach of trust under Sec 405/406 of Indian Penal Code. Hence the appellant cannot plead that there was no intentional delay in remittance of contribution atleast to the extent of 50% of the total contribution.

9. Considering the fact that the appellant establishment is a Government of Kerala company and under real financial strain, they are entitled for some relief as far as damages under Sec 14B is concerned. Though the learned Counsel for the respondent strongly objected to the plea, I am of the considered view that the appellant can be given some accommodation with regard to damages under Sec 14B of the Act.

10. Considering the facts, circumstances, pleadings and evidences in these appeals, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages.

Appeals are partially allowed, the impugned orders under Sec 14B of the Act are modified and the appellant is directed to remit 70% of the damages. Appeal against Sec 7Q order demanding interest is rejected as not maintainable.

Sd/-
(V.Vijaya Kumar)
Presiding Officer