



सत्यमेव जयते

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

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

**APPEAL No.458/2019**  
(Old No. ATA 316 (7) 2016)

Appellant : M/s. Niraamaya Retreats  
Kovalam (P) Ltd.  
(Formerly Surya Samudra Holiday  
Resorts (P) Ltd.)  
Pulinkudi, Mullur.P.O.  
Thiruvananthapuram – 695 521.

By Adv. Ajith S Nair

Respondent : The Regional PFCommissioner  
EPFO,Sub Regional Office  
Pattom, Trivandrum – 695004

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/12736/RO/TVM/PD/LC/2015/6417 dated 29.12.2015 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter

referred to as 'the Act') for belated remittance of contribution from 04/2012, 12/2013, 03/2014, 04/2014, 07/2014 and 09/2014. Total damages assessed is Rs. 1,32,207/- (Rupees one lakh thirty two thousand two hundred and seven only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant is a company incorporated under Companies Act 1956 and is engaged in the business of tourism and running a tourist resort. The appellant is covered under the provisions of the Act. The appellant establishment is maintaining the records and was being inspected by the Enforcement Officers of the respondent authority. The authority never raised any objection regarding maintenance of records and other compliance issues. The respondent issued a summons under Sec 14B of the Act alleging delay in remittance of Provident Fund contribution. The appellant gave its explanation for the delay in remittance. Ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent organisations has not suffered any loss due to the delay. The opportunity for hearing

provided to the appellant was an empty formality. The respondent has no case that the appellant purposefully evaded payment of contribution and there is mensrea warranting imposition of damages as penalty. The financial difficulties pleaded by the appellant was a mitigating circumstance which was not considered by the respondent authority.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of provident fund and other dues. Belated payment attracts levy of penal damages. Hence a notice under Sec 14B dated 11.11.2015 was issued to the appellant along with a detailed delay statement. The appellant was also given an opportunity for personnel hearing on 03.12.2015. A representative of the appellant attended the hearing and admitted the delay. The claim of the appellant that they are regular in compliance is not correct. Many times the contributions were recovered from the appellant establishment through revenue recovery action. There is no dispute regarding the fact that there is delay in remittance which will attract damages under Sec 14B of the Act. The Hon'ble Supreme Court in ***M/s. Organo Chemical***

***Industries Vs Union of India***, 1979 AIR (SC) 1803 held that “this social security measure is a human homage the state pays to Article 39-41 of the Constitution. The validity of the project depends on the employer duly deducting the workers’ contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function”. Financial difficulties cannot be a valid ground for delaying the remittance of contribution. The Hon’ble Supreme Court of India in ***Organo Chemical case (supra)*** held that “Even if it is assumed that there was loss as claimed it will 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”. Mensrea is not a relevant consideration in the assessment of damages under Sec 14B of the Act. In ***Chairman, SEBI Vs Sriram Mutual Fund***, AIR 2006 (5) SC 361 the Hon’ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act.

4. There is no dispute regarding the fact that there was delay in remittance of provident contribution. The respondent therefore initiated action under Sec 14B of the Act. The respondent issued summons along with a delay statement. The appellant was also given an opportunity for personnel hearing. A representative who attended the hearing admitted the delay and no further grounds were pleaded. The respondent authority therefore issued the impugned order.

5. In this appeal, the learned Counsel for the appellant pleaded that the delay in remittance was due to the financial constraints of the appellant establishment. The learned Counsel for the respondent pointed out that no documents were produced before the respondent authority or in this appeal to substantiate 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 U/s 14B of the Act. In ***Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal***, 2013 (1) KHC 457 also held that the respondent authority shall

consider the financial constraints as a ground while levying damages U/s 14B if the appellant pleads and produces documents to substantiate the same. In ***Elstone Tea Estates Ltd Vs RPFC***, WP(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

6. Another ground pleaded by the learned Counsel for the appellant is with regard to lack of mensrea in belated remittance of contribution. The learned Counsel for the respondent pointed out that the appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of employees' is an offence of breach of trust under Sec 405/406 of Indian Penal Code and therefore the appellant cannot plead that there is no mensrea in belated remittance of contribution to the extent of 50% of the total contribution. 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.

8. 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.

9. 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