



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

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

(Tuesday 14th day of December, 2021)

APPEAL No. 481/2019

(Old No. ATA 254 (7) 2016)

Appellant

M/s Anil Construction
TC 14/732
Observatory view, Palayam
Thiruvananthapuram – 695 033

By Adv.C.M.Stephen

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan, Pattom
Thiruvananthapuram – 695 004

By Adv. Ajoy.P.B

This case coming up for final hearing on 06.09.2021 and this Tribunal-cum-Labour Court on 14.12.2021 passed the following:

ORDER

Present Appeal is filed from order No. KR/22828/TVM/PD/2016/8300A dated 02.02.2016 assessing damages under Section 14B of EPF Act and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 10/2008 to

12/2012 and 01/2013 to 06/2013. The total damages assessed is Rs. 113086/- (Rupees one lakh thirteen thousand eighty six 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 proprietary concern. The appellant establishment was covered under Sec 1(3) (b) with retrospective effect from 27.10.2008 vide coverage notice dated 31.12.2008. A copy of the coverage memo dated 31.12.2008 is produced and marked as Annexure A2. The appellant was regular in compliance and the chalans for having remitted the amount for the period from 10/2008 – 06/2013 is produced and marked as Annexure A3 series. The appellant had been remitting contributions through cheques favouring the respondent. The respondent issued notice dated 07.01.2014 alleging delay in remittance of contribution. A copy of the notice is produced and marked as Annexure A4. Though the appellant contented that they issued notice, the appellant had never received the same. The appellant was not in receipt of any notice for hearing on 28.05.2014, 08.10.2015 and 17.12.2015. The notice was issued for assessing damages and interests from 10/2008 – 12/2012 and no notice was issued for assessing damages for the period

from 01/2013 – 06/2013. The composite order issued under Sec 14B and 7Q of the Act are without jurisdiction. The respondent authority ought to have examined whether the alleged delay was intentional. The respondent authority ought to have considered the mitigating circumstances leading to the delayed remittance of contribution. The delay in remittance of contribution was beyond the control of the appellant. The respondent authority failed to examine whether the default was intentional, continuous, permanent and malafide. The respondent authority failed to apply the discretion available to him under Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 10/2008 to 12/2012 and 01/2013 to 06/2013. The delayed remittance will attract damages under Sec 14B of the Act read with Para 32A of EPF Scheme. Hence a show cause notice dated 17.01.2014 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. Along with the summons, a detailed delay statement was also enclosed. The appellant was also provided an opportunity for personnel hearing on 12.03.2014. None attended the hearing on 12.03.2014. Another notice dated 09.04.2014

was issued for assessing damages for the period from 11/2008 to 06/2013 and fixing a personnel hearing on 28.05.2014. The notice was acknowledged by the appellant but did not attend the hearing held on 28.05.2014. The enquiry was further adjourned to 08.10.2015 and 17.10.2015. The appellant failed to attend any of these hearings. The delay in remitting the contribution was never disputed by the appellant. The ground taken by the appellant that the appellant establishment is a no profit no loss organisation cannot be a ground for waiving damages. The Provident Fund dues delayed by the appellant includes the share of contributions deducted from the salary of the employees. The claim of the appellant that the respondent issued a composite order under Sec 14B and 7Q is not correct. The two orders are issued under two different sections and are separate orders. The interest demanded under Sec 7Q of the Act is not appealable. The appellant was given more than adequate opportunity for appearing and explaining the delay. After acknowledging the summons, the appellant stayed away from the proceedings at their risk and cost. The delay in remittance of employee share of contribution that was deducted from the salary of the employees' cannot be justified under any circumstances. The Hon'ble

Supreme Court of India in ***Chairman, SEBI Vs Sriram Mutual Fund***, Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provisions of civil Act. It was clarified that penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes totally irrelevant.

4. According to the learned Counsel for the respondent, the appellant delayed remittance of contribution and therefore action was initiated to levy damages and interest for belated remittance of contribution. Initially notice was issued for assessing damages and interest for the period from 10/2008 to 12/2012. On finding that there was delay in remittance of contribution for the period from 01/2013 – 06/2013, another notice dated 09.04.2014 was issued directing the appellant to show cause why damages for the period from 11/2008 to 06/2013 shall not be levied for belated remittance of contribution. The appellant failed to attend the enquiry, though the summons was acknowledged by him. The enquiry was thereafter posted on many occasions and the appellant failed to attend the hearing on any of these days. The appellant has taken

a contention that the notices were not received by him. According to the learned Counsel for the respondent, the notices were acknowledged by the appellant and there was no reason to disbelieve the same. The appellant produced Annexure A4 notice dated 17.01.2014 fixing the enquiry under Sec 14B on 12.03.2014 at 3PM which would clearly show that the appellant was in receipt of the notice of enquiry under Sec 14B of the Act. The Hon'ble High Court of Bombay in ***Super Processors Vs Union of India***, (1994) III LLJ 564 (Bom), held that "since the petitioner have chosen not to file reply to the show cause notice and not to lead evidence in support thereof, there was nothing to be adjudicated. Hence the impugned order cannot be assailed on the ground that it is not a speaking order". According to the appellant, there was no delay in remittance of contribution. However, the Annexure A3 series of copies of chalans produced by the appellant clearly establishes the fact that there was indeed delay on the part of the appellant in remitting the contribution. The appellant contented that the delay in remittance of contribution was not intentional. 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.

5. The impugned order according to the appellant is a composite order. However it is seen that both the orders are separate and issued under different sections but on the same date. As already pointed out, the appeal is mainly filed on three grounds. First ground taken by the appellant is that no notice is received by the appellant with regard to the 14B proceeding. Annexure A4 notice dated 17.01.2014 clearly establish the fact that the appellant establishment was in receipt of the notice. The second ground taken by the appellant was that there was no delay in remittance of contribution. It is seen from Annexure A3 series of chalans produced by the appellant, that there was delay in remittance of contribution during the relevant period. The third ground taken by the appellant is with regard to no intentional delay in delayed remittance of contribution. The recent decision of the Hon'ble Supreme Court discussed above confirmed the position that intention of parties is not relevant while levying damages under Sec 14B of the Act. Hence all the grounds taken by the appellant falls flat.

6. The learned Counsel for the respondent contented that no appeal can be maintained 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.

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

Hence the appeal is dismissed.

Sd/-

(V.Vijaya Kumar)
Presiding Officer