



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 11th day of October 2021)

APPEAL No. 486/2019
Old ATA No. 374 (7) 2016

Appellant : M/s. Modern Graphics
Malus Complex
Kaloor,
Kochi - 682 017

By Adv. A V Xavier

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloor
Kochi - 682 017

By Adv. Sajeew Kumar K Gopal

This case coming up for final hearing on 06/07/2021
and this Tribunal-cum-Labour Court on 11/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KCH/
15965/DAMAGES CELL/PVJ/2015/16023 dated 28/01/2016

assessing damages Under Sec 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 04/1999 to 10/2009. Total damages assessed is Rs.1,55,367/- (One Lakh fifty five thousand three hundred and sixty seven only). The interest demanded under Sec 7Q for the same period is also being challenged in this appeal.

2. The appellant is an offset printing press and is covered under the provisions of the Act w.e.f. 01/04/1999. All the eligible employees are enrolled to the fund and many employees also left the service. There was delay in payment of contribution. The respondent organisation periodically demanded damages and interest and same was paid by the appellant. A demand notice issued by the Recovery Officer of the respondent organisation dated 23/05/2006 for the assessing damages and interests for the period from 01/2002 to 02/2004 is produced and marked as Annexure A2. The assessment of damages for belated remittance of contribution for the period from 03/2004 – 11/2004 was also done by the

respondent authority. A copy of the said order dated 19/07/2010 is produced and marked as Annexure A5. All the above demands of damages and interests were cleared by the appellant. It can be seen that there is overlap between the periods of the earlier assessment and present assessment as per the impugned order. When the respondent organisation introduced computerisation in March 2012, there were many mistakes in the data entry which lead to many omissions in the entry. The respondent authority issued a notice dated 19/03/2014 wherein the appellant is directed to show cause why damages shall not be levied for belated remittance of contribution for the period from 04/1999 – 10/2009. The original notice received is produced and marked as Annexure A6. The period covered is from the date of coverage of the appellant and includes the period in Annexure A2 and A5. The appellant was also given an opportunity for personnel hearing on 09/07/2014. A representative of the appellant attended the hearing and filed a written submission, specifically stating that the appellant is not maintaining all the records of earlier

period. A copy of the written submission is produced and marked as Annexure A7. The respondent there after issued the impugned orders assuming that the representative of the appellant admitted the liability, which is not correct.

3. The respondent filed counter denying the above allegations. The appellant is a chronic and persistent defaulter in remittance of provident fund contribution from the date of coverage. It is noticed that there was delay in remittance of contribution from 04/1999 to 10/2009. Belated remittance will attract damages under Sec 14B and interest under Sec 7Q. Hence a notice was issued to the appellant as per Annexure A6 dated 20/05/2014 to show cause why damages shall not be levied for belated remittance. A detailed delay statement was also forwarded to the appellant. The appellant was also given a personnel hearing on 09/07/2014. On the request of the appellant, the enquiry was adjourned to 28/08/2014, 06/11/2014 and 16/01/2015. A representative of the appellant attended the enquiry on 16/01/2015 and filed Annexure A7 written statement and enquiry was adjourned to

28/01/2015. On verification of the records, it was found that out of the dates indicated in Annexure A6 damages statement, penal damages as well as interests have already been levied and recovered in majority of the month except for the months 07/2000, 02/2001, 10/2003, 11/2003 & 8/2004 to 02/2009. Hence the respondent authority claimed interest and damages only for the said periods. The appellant defaulted or delayed remittance of contribution for the period from 05/1999 to 03/2000, 4/2000 to 01/2001, 04/2001 to 01/2002, 02/2002 to 03/2003, 12/2003 to 03/2004, 04/2004 to 11/2004 and 03/2011 to 02/2012 for which the respondent assessed the damages and interests and recovered the same. None of these periods are overlapping with periods or months in Annexure A1 assessment order. With regard to delay in initiating proceedings under Sec 14B, the Hon'ble Supreme Court of India in **Hindustan times Ltd Vs Union of India and another** 1998(2)SCC 242 held that *"there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Sec 14B. The fact that the proceedings are*

initiated or demand for damages is made after several years cannot by itself be a ground for drawing an interference of waiver or that the employer was lulled into a belief that no proceedings under Sec 14B would be taken; mere delay in initiating action under Sec 14B cannot amount to prejudice in as much as the delay on the part of the department, would have only allowed the employer to use moneys for his own purposes or for his business especially when there is no additional provision for charging interests". The appellant cannot ignore the statutory liability cast upon him under Para 30 and 38 of EPF Scheme to remit the monthly contribution payable invariably within 15 days of close of every month. In **Organo Chemical Industries Vs Union of India** 1979 (2) LLJ 416 Hon'ble Supreme Court of India held that the reason for introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of misutilizing not only their own but also the employees' contributions. In **Chairman, SEBI Vs Sriram Mutual Fund**, the Hon'ble Supreme Court held that

mensrea is not an essential ingredient for contravention of provisions of Civil Act.

4. The appellant filed a rejoinder denying the claims of the respondent in the written statement filed by them. As per Sec 7Q and the decision of the Hon'ble Supreme Court, there has to be a limited enquiry regarding the range of delay. There is an overlap of period of delay as evident from Annexure A1, delay from 04/1999 – 10/2009. In Annexure A2 and A3, the delay period is from 10/2003 to 07/2004 and Annexure A4 and A5, the delay period is from 03/2004 to 11/2004. The respondent failed to exercise his discretion provided under Sec 14B of the Act and Para 32A of the EPF Scheme. The appellant also failed to consider the grace period of 5 days which was prevailing during the period in question. Annexure A6 dated 20/05/2014 is a summons to appear for hearing for belated remittance made during the period 01/04/1996 to 19/03/2014. In Para 3 of the counter, it is stated that a detailed damages statement for belated remittance for period from 01/1998 – 10/2008 is annexed. The coverage of the

appellant under provisions of the Act itself is only from 04/1999. Hence it is clear that there is no application of mind by the respondent authority while issuing the impugned order.

5. The learned Counsel for the appellant attacks the impugned orders on various grounds. Main ground pleaded by the learned Counsel by the appellant is with regard to the overlap in periods of the present assessment and some previous assessment of damages. He also pointed out anomaly in the notice and the stand taken by the respondent in the counter. It is seen that the present proceedings are initiated vide Annexure A6 notice dated 20/05/2014 for assessing damages for belated remittance of contribution for the period 01/04/1996 to 19/03/2014. However the delay statement enclosed along with the Annexure A6 notice is furnishing the delay in remittance of contribution for the period from 04/1999 to 10/2009. The proposed damages and interests in the above statement is also calculated for the period from 19/04/1999. According to the learned Counsel for the appellant, the establishment itself is covered under the

provisions of the Act w.e.f. May 1999. Hence it is not clear how the respondent in the Annexure A6 summons indicated that the damages are being calculated from 01/04/1996. Further in Para 3 of the reply statement filed by the respondent it is stated that “a detailed damages statement showing month wise details of belated remittance for the period from 01/1998 to 10/2000 was also Annexed to A6 notice”. No explanation is offered for these anomalies in the notice and the reply statement filed by the respondent. From the impugned order, Annexure A1, it is seen that the damages is assessed for period from 04/1999 to 10/2009. It is admitted by the respondent that the appellant during the course of 14B proceedings filed Annexure A7 representation dated 16/01/2015. However the respondent authority did not specifically replied any of the points raised by the appellant in Annexure A7 written statement filed by them before the respondent authority. The main contention taken by the appellant is that there is overlap in periods of assessment of damages in the present proceeding as well as earlier

proceedings. The appellant produced Annexure A2, A3, A4 and A5 to substantiate their claim of overlap. Though the impugned order says that the damages for the period 04/1999 to 10/2009 are being assessed through the impugned order, in the reply statement filed by the respondent at Para 7, it is specifically contented that though the proceedings were initiated for assessment of damages for whole period, as per the notice, during the course the proceedings, it was noticed that for major part of the period, penal damages and interest were assessed and recovered from appellant establishment, and therefore, the present assessment is confined to 07/2000, 02/2001, 10/2003, 11/2003 and 08/2004 to 02/2009. However the impugned order is completely silent in this regard. In Para 10 of the reply statement, it is stated that for the period from 05/1999 to 03/2000, 04/2000 to 01/2001, 04/2001 to 01/2002, 02/2002 to 03/2003, 12/2003 to 03/2004, 04/2004 to 11/2004 and 03/2011 to 02/2012, the damages and interests have already been assessed and recovered from the respondent. In Para 10 of the reply

statement, it is further stated that for the period 04/2004 to 11/2004 the damages and interest were already assessed and recovered. However in Para 7 it is further stated that the damages and interest for period from 08/2004 to 02/2009 is included in the present assessment, which means, that there is an overlap for the month of August, September, October and November 2004 in the present assessment. This is also supported by Annexure A4 and A5 assessment orders. Further in Para 7, it is stated that the damages and interest for the period from 10/2003 & 11/2003 is included in the assessment. However as per Annexure A2 recovery notice and A3 compliance report it is seen that damages and interest for the period 01/2002 to 02/2004 had already been assessed and recovered from the appellant. Hence the case of the appellant that there is overlap in periods in the present assessment of damages and interests and the earlier assessment is substantially proved. The respondent authority either ignored the contention or did not explain the reason for the overlap, inspite of the specific stand taken by the appellant that there is

overlap of periods in the assessment of damages and interest. Though the respondent made an attempt to clarify some of the periods of delay and overlap in the reply statement filed, the impugned order is completely silent with regard to the same.

6. The learned Counsel for the appellant also pointed out that there was delay in initiating the process for assessing damages, and the same vitiated the whole proceedings. The learned Counsel for the respondent pointed out that there is no limitation provided under the provisions of the Act and Scheme and therefore the assessment cannot be held to be bad because of the delay. The Hon'ble Supreme Court of India in **M/s. K Street Lite Electronics Company Vs Provident Fund Commissioner**, 2001 (4) SCC 449 held that delay in initiating proceedings under Sec 14B of the Act will not be a ground for setting aside an order imposing damages. In **Hindustan Times Ltd Vs Union of India**, 1998 AIR (SC) 688 (S.C.2J) the Hon'ble Supreme Court held that the delay of 14 years in initiating action for assessing damages will not be vitiated due to delay, in view of the fact that the Legislature did not think it

fit to make any provision prescribing period of limitation in the Act. In **RPFC Vs KT Rolling Mills Pvt. Ltd.**, 1995 AIR (SC) 943, the proceedings for assessment of damages was initiated after 12 years. The Hon'ble Supreme Court held that an order assessing damages cannot be set aside on the ground of delay as the delay in default related even to the contribution of the employees contribution, which money the respondent must have used for its own purposes, at the cost of whose benefit, it was meant. In view of the clear exposition of law by the Hon'ble Supreme Court consistently, the ground of delay in initiating the process of assessment of damages and interest cannot be held to be vitiating the assessment process.

7. The learned Counsel for the respondent pointed out that the appellant is a chronic defaulter and therefore he is not entitled for any relief as far as damages and interest are concerned. The documents produced by the appellant also will substantiate the case of the respondent that the appellant is chronic defaulter. Annexure A6 delay statement would show that the appellant delayed remittance of contribution from the

date of coverage, inspite of the fact that the respondent assessed and recovered the damages and interest for various periods of delay.

8. The learned Counsel for appellant also pointed out other issues such as mensrea. As pointed out in earlier Para's, since there is a conflict in the impugned orders, the counter statement filed by the respondent and in the notice issued to the appellant by the respondent, I am not expressing any view on those issues. The respondent authority has issued the present orders in a very casual manner and for the reasons pointed out earlier, it is not possible to accept the impugned orders. In the normal course, an order issued under Sec 7Q of the Act is not interfered by this Tribunal since there is no provision under Sec 7(I) to challenge an order issued under Sec 7Q. However in this case it is seen that the appellant succeeded in showing that there is a possible overlap in the present assessment and earlier assessments of damages and interest.

9. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to interfere with the impugned orders.

10. Hence the appeal is allowed, the impugned orders under Sec 14B and 7Q are set aside and matter is remitted back to the respondent to reassess the damages and interest. The respondent authority shall issue a proper notice with delay statement and provide an opportunity to the appellant to represent his case. If the appellant fails to respond to the summons, the respondent may assess the damages and interest according to law, within a period of six months.

Sd/-

(V. Vijaya Kumar)
Presiding Officer