



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 4th day of October 2021)

APPEAL No.537/2019

(Old No. ATA 377 (7) 2010)

Appellant

M/s. SUT Hospital,
Pattom
Thiruvananthapuram – 695 004

By Adv. M Gireeshkumar

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Nitha N S

This case coming up for final hearing on 26/04/2021
and this Tribunal-cum-Labour Court on 04/10/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/ 12375/
RO/TVM/PD/NS/2010/1662 dated 11/05/2010 assessing
damages under Section 14B of EPF and MP Act (hereinafter
referred to as 'the Act') for belated remittance of

contribution for the period 03/2006 to 02/2007. Total damages assessed is Rs. 2,24,172/-(Rupees Two Lakh Twenty four thousand one hundred and seventy two only).

2. The appellant is a unit of Trivandrum Specialist Hospital Ltd., a corporate body registered under the Companies Act. The appellant is covered under the provisions of the Act. The appellant received a notice dated 08/04/2010 calling upon the appellant to show cause why damages under the provisions of the Act need not be levied for belated contribution. The said notice along with the statement of accounts is produced as **Annexure A1**. It was also indicated in the notice that appellant is also liable to remit interest under Sec 7Q of the Act. The appellant was also given an opportunity for hearing on 05/05/2010. A representative of the appellant attended the hearing and pointed out that the appellant is extending medical facilities to the poor and needy. Because of the charity work extended by the appellant, it has an accumulated loss of 23 crores. It was also pointed out that the delay in remittance was due to financial crisis of appellant establishment. Since the damages were assessed on the

maximum, the representative of the appellant pleaded that the quantum of damages and interest may be reduced. Without considering the representation of the appellant, the respondent issued the impugned order. The respondent authority failed to appreciate the fact that the delay in remittance was not intentional and was only due to the financial constrains of the appellant establishment. The appellant did not provide any opportunity for hearing before quantifying interest under Section 7Q of the Act. The interest levied @ 12% is in excess of lending rate of interest charged by Nationalised Banks. Levying damages under Sec 14B and interest under Sec 7Q for the same period amounts to penalising the appellant twice for the same wrong. The respondent failed to exercise the discretion allowed to him under Section 14B of the Act and Para 32 A of EPF Scheme.

3. The respondent filed counter denying the above allegations. The appellant establishment is a chronic defaulter in payment of statutory dues under EPF Act and Schemes. The appellant delayed the remittance of contribution for the period from 03/2006 to 02/2007. Hence notice was issued to

the appellant along with a statement of delayed in remittance. A representative of the appellant attended the hearing. It was clarified during the course of hearing that Sec 7Q does not contemplate a separate enquiry and the penal damages and interests are being assessed at the prescribed rates in accordance with the statutory provisions. The financial crisis or nature of charity work of an establishment is not a criteria to wave/reduce damages. The respondent is empowered to recover by way of penalty such damages under Sec 14 B as per notification No. SO.1553 dated 17/4/2002. The impugned order is issued after affording adequate opportunity to the appellant and therefore there is no violation of principles of natural justice.

4. The main ground pleaded by the appellant is with regard to the financial stringency of the appellant during the relevant point of time. However the appellant failed to produce any evidence to substantiate its claim of financial difficulties. In **M/s. KeePharma 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 the Honourable High Court of Kerala 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.

5. Hence the appellant ought of have proved its financial difficulties by producing the supporting documents before the respondent authority or atleast in this appeal. Having failed to do so, the appellant cannot plead any relief on the mitigating circumstances of financial difficulty pleaded by the appellant.

6. The learned Counsel for the respondent pointed out that an order issued under Sec 7Q of the Act cannot be

challenged in an appeal under Sec 7(I) of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 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 U/s 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 U/s 7Q of the Act is not appealable.

7. Another ground pleaded by the appellant is that there was no intentional delay in belated remittance of contribution. According to the learned Counsel for the respondent, the appellant has no case that the salary of the employees' was delayed during the relevant point of time. Even if there is any delay in payment of wages to its employees', the same is not substantiated before the

respondent authority or in this appeal. When the salary is paid, the employees' share of contribution is deducted from the salary of the employees'. Non remittance of employees' share of contribution deducted from salary of employee is an offence under Sec 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in belated remittance of contribution, at least to the extent of employees' share of contribution which amounts to the 50% of total contribution.

8. Considering the circumstances, facts and pleadings, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer