



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

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

(Friday the, 3rd December 2021)

APPEAL No. 54/2020

Appellant

M/s.K.T.J.Tours and Travels
Cherukunnu
Kannur – 670 301

By : Adv. K.K. Premalal &
Adv. Vishnu Jyothis Lal

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishya Nidhi Bhavan
Kannur – 670 001

By Adv. K.C.Santhosh Kumar

This case coming up for final hearing on 07.09.2021 and this Tribunal-cum-Labour Court on 03.12.2021 passed the following:

ORDER

Present Appeal is filed from order No. KR/KNR/1885505/Dam.I(1)/Damages/2019-20/2907 dated 20.02.2020 assessing damages under Section 14B of EPF Act and MP Act (hereinafter referred to as the Act) for belated remittance of contribution for the

period from 04/2016 – 02/2019. The total damages assessed is Rs.3,30,821/- (Rupees three lakh thirty thousand eight hundred and twenty one only)

2. The appellant is a proprietary concern engaged as tour operator. The appellant is paying welfare funds in respect of all employees under Motor Transport Workers' Welfare Fund Act 1985. The respondent covered the appellant under the provisions of EPF and MP Act and compelled the appellant to remit contribution for the period from 04/2016 – 02/2019. Subsequently proceedings under Sec 14B was initiated as per notice dated 14.11.2019. A true copy of the notice dated 14.11.2019 is produced and marked as Annexure 1. The non-payment of EPF contribution was under the bonafide belief that no dual payment is necessary as the employees are already covered under the provisions of the Motor Transport Workers' Welfare Fund Act 1985. Without considering the real facts of this case, the respondent issued the impugned order assessing damages for belated remittance of contribution. The Hon'ble High Court of Kerala in similar circumstances held in **RPFC Vs Kerala Small Industries Development Corporation Ltd**, 2016 (3) KLT 893 held that Head Load Workers Act 1978 will prevail over the Employees Provident Fund and Miscellaneous Provisions Act

1952, as the same, being a state Legislation providing Provident Fund benefit to head load workers. In **Quilon District Automobile Workers' Co-operative Society Ltd. Vs E.S.I. Corporation**, 2017 (2) KLT 21, the Hon'ble High Court of Kerala held that the very expression may recover undoubtedly reveal the existence of legal restriction to waive or reduce damages in a given circumstance. The change of law brought in by introduction of Sec 7Q has been considered in **Regional Provident Fund Commissioner Vs Harrisons Malayalam Ltd.** 2013 (3) KLT 790. In **Employees' State Insurance Corporation Vs HMT Ltd. And Another**, AIR 2008 SC 1322 and in **Assistant Provident Fund Commissioner EPFO and Another Vs Management of RSL Textiles India Private Limited** 2017 (3) SCC 110 Hon'ble Supreme Court held that mensrea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 01.04.2016. Consequent on receipt of remittance belatedly for the period 04/2016 to 02/2019, the respondent issued show cause notice to the appellant along with the delay statement as to why damages under Sec 14B of the Act

shall not be imposed on the appellant. An opportunity for personnel hearing was also given on 27.11.2019. Since none attended the hearing, the enquiry was adjourned to 20.12.2019. The enquiry was further adjourned to 17.01.2020 and 17.02.2020. The appellant further requested for time. However the appellant failed to attend the hearing on any of these dates. Sec 14B of the Act provides that Commissioner may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the Scheme. This means that the rates specifying under Para 32A of EPF Scheme has to be adopted without any deviation. The damages levied by the respondent is strictly in accordance with the rates prescribed under Paragraph 32A of EPF Scheme. The respondent is not empowered either to reduce or waive the rate of penal damages. With regard to the contention of the appellant that they explained the actual state of affairs and sought adjournment for submitting detailed explanation, it is pointed out that the hearing was initially fixed on 27.11.2019 and the appellant acknowledged the notice of the hearing. None attended the hearing on the said date, therefore the hearing was adjourned to 20.12.2019. The representative of the appellant attended the hearing and sought some more time on that

date. The request was allowed and the hearing was adjourned to 17.12.2020. The appellant vide letter dated 16.01.2020 requested for adjournment as he could not attend the hearing on 17.01.2020 due to some technical reason. A copy of the letter dated 16.01.2020 is produced and marked as Exhibit R1(a). In the interest of natural justice a last chance was provided on 17.02.2020. In spite of acknowledging the notice the appellant neither attended the hearing nor produced the documents to support their claim. On 15.02.2020, the appellant send a letter seeking further adjournment. Copy of the letter dated 15.02.2020 is produced and marked as Exhibit R1(b). Hence it was very clear that the appellant was only trying to prolong the matter by delaying the proceedings. The respondent therefore issued the impugned order with regard to the contention that the appellant establishment is contributing to Kerala Motor Transport Workers' Welfare Fund. It is pointed out that the proviso to Sec 4 of Kerala Motor Transport Workers' Welfare Fund Act 1985 classifies that 'nothing in this sub section shall apply to a motor transport undertaking to which the provisions of Employees Provident Funds & Miscellaneous Provisions Act, 1952 applies'. As already pointed out, the respondent authority is constrained by the provisions of

Sec 14B and also Para 32A of EPF Scheme 1952 and no discretion is available to the respondent to reduce or waive the damages. The Hon'ble High Court of Calcutta in **Atal Tea Co. & Others Vs RPF Commissioner**, 1997 LIC 1207, held that after amendment, the power of the Commissioner to levy damages upto the maximum rate of 100% have been curtailed and he is now required to follow the sliding table incorporated in Paragraph 32A of the Scheme. Sections 7Q and 14B are separate and distinct provisions under the Act. Hence it is not correct to say that after introduction of Sec 7Q, the damages under Sec 14B shall require a sympathetic consideration. In **M/s Khodaya Systems Ltd Bangalore Vs RPFC**, 2008 1LLJ 329 (Karn. H.C.), the Hon'ble High Court of Karnataka held that Sec 14B and 7Q are dealing with two distinct aspects which cannot be held and treated as a concept of double jeopardy. The appellant did not plead any financial difficulty as a reason for delayed remittance of contribution and therefore the decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd. (Supra)** is not applicable to the facts of the present case.

4. The learned Counsel for the appellant flagged two issues in this appeal. One issue is with regard to the fact that the appellant establishment was contributing to Motor Transport

Workers' Welfare Fund and was, therefore, under the bonafide belief that the appellant establishment need not be covered under the provisions of the Act. However the learned Counsel for the respondent pointed out and rightly so, that as per the proviso to Sec 4 of the Kerala Motor Transport Workers' Welfare Fund Act 1985 an establishment covered under the provisions of EPF and MP Act 1952 is specifically excluded from the provisions of Kerala Motor Transport Workers' Welfare Fund Act. The learned Counsel for the appellant produced the details of payment made by the appellant establishment to the welfare fund board from 2015. However as rightly pointed out by the learned Counsel for the respondent, in view of the specific exclusion, the payment of contribution to the welfare fund will not in anyway help the appellant to seek exclusion from the provisions of EPF and MP Act. However the documents produced by the appellant would necessarily show the bonafides of the appellant establishment

5. Another contention made by the learned Counsel for the appellant is with regard to lack of mensrea in belated remittance of contribution. According to him, the appellant establishment was under the bonofide belief that the appellant need not pay provident fund contribution since they are already covered and complying

under the Welfare Fund Board. 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.

6. Considering the fact that the appellant was contributing to both the schemes till December 2017, I am of the considered view that the appellant establishment can be given some accommodation with regard to payment of damages for belated remittance of contribution under Sec 14B of the Act.

7. Considering the facts, pleadings, evidences and arguments in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 75% of the damages assessed under Sec 14B of the Act.

8. Hence the appeal is partially allowed the impugned order under Section 14B of the Act is modified and the appellant is directed to remit 75% of the damages.

Sd/-
(V.Vijaya Kumar)
Presiding Officer