



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

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

(Thursday the, 6th January 2022)

APPEAL No. 573/2019

(Old No. ATA 862 (7) 2012)

Appellant

M/s. Sarva Shiksha Abhiyan
SSA Bhavan, Nandavanam,
Thiruvananthapuram – 695 033

By Adv. Jogy Scaria

Respondent

The AssistantPF Commissioner
EPFO, Regional Office,
Pattom
Thiruvananthapuram – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 07.10.2021 and this Tribunal-cum-Labour Court on 06.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/26176/RO/TVM/PD/VK/2010/6210 dated 06.08.2012 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period

from 07/2003 to 01/2011. The total damages assessed is Rs.17,76,727/- (Rupees seventeen lakh seventy six thousand seven hundred and twenty seven only)

2. The appellant is a state implementing society of Ministry of Human Resource Development, Government of India. The appellant establishment was brought under the coverage of the Act w.e.f. 01.07.2003 and intimated to the office during 2010 after a lapse of 7 years through Annexure P2 order. Immediately after issue of the order, the respondent recovered the assessed dues under Sec 7A, by attaching the bank account of the appellant. Now the respondent has directed the appellant to remit the damages and interests for belated remittance of contribution. From 02/2010 onwards the appellant establishment is regular in compliance. The funds of the project are provided for specified activities and approved in the annual work plan of Government of India. There was no wilful defiance of law or laches on the part of the appellant. The impugned order is issued in a mechanical manner without application of mind. Penalty cannot be saddled on a person or an establishment who is not guilty. The respondent authority ought to have considered the mitigating

factors. It is settled position of law that damages cannot be imposed unless there is wilful delay and mensrea on the part of the appellant. The respondent authority failed to exercise his discretion available under Sec 14B of the Act. The respondent cannot levy damages without actual determination of loss sustained by the respondent organisation.

3. The respondent filed counter denying the above allegations. The appellant is liable to remit Provident Fund contribution within 15 days of close of every month. The appellant remitted the dues belatedly for the period 07/2003 – 01/2011. The delayed remittance attracts damages under Sec 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dated 18.07.2012 to show cause why damages as stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme should not be recovered from him. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personnel hearing on 08.08.2012. A representative of the appellant attended the hearing. He submitted that the appellant establishment may be exempted from remitting damages and interest. The appellant filed an appeal, ATA No 862(7)2012 before

the EPF Appellate Tribunal, New Delhi and vide its interim order dated 01.04.2012 directed the respondent to de-freeze the account of the appellant establishment. The appellant was also directed to deposit Rs.10,00,000/- with Tribunal within 4 weeks of the order. The appellant vide his letter dated 20.05.2013 stated that he had deposited Rs.10,00,000/- with the Tribunal on 29.04.2013. A copy of the letter is produced and marked as Exhibit R1. Damages are levied as a result of belated payments of statutory dues. The predominant object is to penalise so that employers may be thwarted or deterred from making any further defaults. The impugned order was issued after taking into account all the submissions made by the appellant. While discussing the implications of Sec 14B in ***Organo Chemical Industries Vs Union of India***, 1979 (4) SCC 573, the Hon'ble Supreme Court held that the pragmatics of the situation is that if the stream of contributions were frozen by employers default after due deduction from the wages and diversion for their own purpose, the scheme would be damnified by traumatic starvation of the fund. The benefits payable under the Act are meant for support of weaker section during the superannuated winter of their life. The

financial reservoir for the distribution of benefits is filled by employer by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the fund. If the employer neglects to remit or diverts the money for alien purposes, the fund gets dry and the retirees are denied the meager support when they most need it.

4. The appellant establishment is covered under the provisions of the Act w.e.f. 01.07.2003. According to the learned Counsel of the appellant, the coverage was communicated to the appellant as per Annexure P2. On a perusal of Annexure P2, it is seen that the same is not a coverage memo but is an order issued by the respondent authority under Sec 7A of the Act assessing the dues for the period from 07/2003 – 03/2010. Hence it is clear that the appellant establishment failed to comply as per the provisions of the Act and therefore the respondent assessed the dues and recovered the same from the appellant establishment. After recovery of the dues, the respondent issued a notice dated 18.07.2012 to the appellant directing them to show cause why damages shall not be recovered for belated remittance of contribution. The appellant was also given a detailed delay

statement. The respondent also provided an opportunity for the appellant for personnel hearing. A representative of the appellant attended the hearing and requested for waiver of damages and interests. After taking into account the submissions made by the appellant, the respondent issued the impugned order.

5. In this appeal, the only contention taken by the appellant is that there was no intentional delay in remitting provident fund contribution. It was also pointed out that the appellant is an institution under the HRD, Ministry of Government of India and therefore the learned Counsel for the appellant pleaded that the damages and interests may be waived.

6. On perusal of the impugned order, it is seen that the interest under Sec 7Q is not included in the order. There is a specific mention of the same in the order. 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. The only other ground pleaded by the appellant is with regard to lack of mensrea in belated remittance of 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 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.

8. 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