



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

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

(Thursday the, 14<sup>th</sup> day of July 2022)

**APPEAL No. 640/2019**

(Old No. ATA.221(7)2013)

Appellant : M/s. J & S Granite Company  
Vallikode – Kottayam Adoor Village  
Kozhenchery Taluk  
Pathanamthitta – 689 656

By Adv. C.M.Stephen

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office,  
Bhavishyanidhi Bhavan, Pattom  
Trivandrum – 695 004

By Adv.Nita N.S.

This case coming up for final hearing on 13.07.2022 and this Tribunal-cum-Labour Court on 14.07.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/22986/TVM/ PD/ VK/2013/19304 dated 20.02.2013 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 02/2006 to 02/2009. The total damages assessed is

Rs.1,73,293/- (Rupees One lakh seventy three thousand two hundred and ninety three only).

2. The impugned order is produced and marked as Annexure A1. Prior to the receipt of Annexure A1, the appellant received an order under Sec 14B read with 7Q of the Act directing him to pay a lumpsum amount of Rs.2,56,427/-. A copy of the said order is produced and marked as Annexure A2. Even though there was an indication in Annexure A2 that if the employer desires to a personnel hearing on the assessment of damages, he can contact Regional Provident Fund Commissioner (C&R)/Assistant Provident Fund Commissioner (C&R) on 08.01.2013, there was no personnel hearing held or proceedings recorded in spite of the appellants presence before the RPFC/APFC. The appellant is not an establishment notified under Sec 1(3)(b) of the Act. It never employed more than 20 persons. Hence the coverage under the Act is without jurisdiction. A copy of the coverage notice is produced and marked as Annexure A3. The respondent authority has not issued any show cause notice before passing the impugned orders. The appellant was not given a reasonable opportunity before issuing the impugned order. The

true copies of the chalans having remitted the contributions are produced and marked as Annexure A4 series. The returns for the relevant period are produced as Annexure A5 series. The impugned orders are not sustainable in view of the fact that the respondent authority has not considered the financial position of the appellant establishment. The respondent authorities failed to notice that the damages under Sec 14B are not envisaged for all delays in remittance of contribution. The Assistant Provident Fund Commissioner who issued the impugned order has no jurisdiction to pass orders under Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant defaulted in payment of contribution during the period from 02/2006 – 02/2009. These belated remittances will attract damages under Sec 14B of the Act. Hence a notice dated 13.12.2012 was issued to the appellant along with a delay statement directing him to appear for a personnel hearing on 08.01.2013. Copy of the notice is produced and marked as Exhibit R1. On 08.01.2013, none appeared for hearing and the matter was adjourned to 30.01.2013. A summons to that effect was issued to the appellant. The appellant acknowledged the receipt of

summons, a copy of which is produced and marked as Exhibit R2. The appellant did not appear in the personnel hearing on 30.01.2013. The hearing was again adjourned to 13.02.2013 and summons dated 01.02.2013 was issued to the appellant, a copy of which is produced and marked as Exhibit R3. The same was also acknowledged by the appellant. Even after receipt of notices, the appellant neither attended the hearing nor filed any representation against the levy of damages for delayed remittance of contribution. Since the appellant failed to avail all the three opportunities given to him, the respondent authority issued the impugned order on the basis of the available records. Damages under Sec 14B and interest under Sec 7Q are two separate provisions with distinct identity. The dispute regarding the coverage under the provisions of the Act cannot be raised in a proceedings under Sec 14B of the Act. The statement of belated payment on which damages were proposed to be levied had been served on the appellant furnishing the due date of contribution, the actual date of payment of contribution and also the delay in remittance of contribution. Since the appellant failed to respond to the notices issued after acknowledging the same, it was presumed that the appellant has no dispute regarding the delay statement received by him. In

**Chairman SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, the Hon'ble Supreme Court held that mensrea is not an essential ingredient for the contravention of the provisions of a civil Act.

4. Present appeal was filed before the EPF Appellate Tribunal, New Delhi and subsequently transferred to this Tribunal after winding up of EPF Appellate Tribunal. This Tribunal issued notice to the appellant and the same was acknowledged on 10.12.2019. The appellant was represented in this appeal on 01.01.2020 and 11.02.2020. There was no representation of the appellant subsequently, though the matter was posted **eight occasions** from 02.12.2020 to 13.07.2022. Hence the respondent was heard and the matter was taken for orders.

5. The appellant establishment delayed remittance of contribution for the period from 02/2006 – 02/2009. The respondent therefore initiated action for assessment of damages and interests vide Annexure 2 notice dated 13.12.2012. The appellant was given an opportunity for personnel hearing on 08.01.2013. Though the appellant acknowledged the summons, he failed to attend the enquiry on 08.01.2013. Hence a further notice was issued on 30.01.2013 and a notice was issued to the

appellant on 09.01.2013. This notice is also seen to be acknowledged by the appellant establishment. However none attended the hearing on 30.01.2013. The respondent gave a further opportunity on 13.02.2013 and issued a notice dated 01.02.2013. The said notice was also not responded by the appellant. The respondent authority therefore issued the impugned order presuming that the appellant has no objection to the delay statement forwarded to him along with Annexure A2 notice.

6. In this appeal, the appellant took a contention that he was not given adequate opportunity for personnel hearing. He has taken Annexure A2 summons also as a composite order, fully knowing that it is only a notice for appearing before the respondent authority on 08.01.2013. The subsequent notices issued on 09.01.2013 and 01.02.2013 was also acknowledged by the appellant but he failed to respond to the notices. The Hon'ble High Court of Punjab and Haryana in **TCM Woollen Mills Pvt. Ltd Vs RPFC and Others**, 1980 (57) FJR, in a similar situation held that "where no reply was filed by the employer against notice issued to him under Sec 14B of the Act, he cannot complaint that

the Commissioner did not make a speaking order, as required by law. Unless the objections and factual matters are presented before the commissioner, he cannot imagine the same and adjudicate there on.” In ***Super Processors Vs Union Of India and Another***, 1994 3 LLJ 564 (Bom), the Hon’ble High Court of Bombay held that “since the petitioners have chosen not to file reply to the show cause notice and not to lead evidence in support thereof, there was nothing which was required to be adjudicated upon. Hence the impugned order cannot be assailed on the ground that it is not a speaking order”. In this case, it is seen that three opportunities were provided to the appellant, the notices were acknowledged by the appellant but failed to appear before the respondent or file any written submission before the respondent authority. Hence the law laid down by the above decisions will be squarely applicable to the present case.

7. There is delay in remittance of contribution which is not disputed by the appellant. One of the grounds pleaded by the appellant for the delay is financial difficulty of the appellant establishment. However the appellant failed to produce any documents to support the case of financial difficulties before

the respondent authority in this appeal. In ***M/s. Kee Pharma 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 under Sec 14B of the Act. In ***Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal***, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages under Sec 14B, if the appellant pleads and produces documents to substantiate the same. In ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Having failed to substantiate the claim of financial difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

8. Another ground pleaded by the appellant is that the respondent authority is not competent to assess damages under



Sec 14B of the Act. It is seen that Government of India vide notification No. SO 1553 dated 17.04.2002 delegated the powers of assessment of damages under Sec 14B to the Assistant Commissioners and Regional Commissioner's and there is no infirmity in the impugned order on that ground.

9. The contention that there was no intentional delay or mensrea is also not legally correct. 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.

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

Hence the appeal is dismissed

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer