



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday. the 25th day of October 2021)

APPEAL No. 723/2019

Old No. ATA 300 (7) 2012

Appellant M/s. Aluvila Cashew Exporters
Aluvila House
Kilikolloor, Mangad
Kollam – 691 015.

By Adv.Alex M Scaria

Respondent The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam – 691 001

By Adv.Pirappancode V.S.Sudheer

This case coming up for final hearing on 30/04/2021
and this Tribunal-cum-Labour Court on 25/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KLM/2454A/
PD/2011-12/2765 dated 24.02.2012 assessing damages
under Section 14B of EPF and MP Act(hereinafter referred to

as 'the Act') for belated remittance of contribution for the period 01/2006 – 01/2007. Total damages assessed is Rs.4,87,222/-. The impugned order is a composite order assessing interest under Sec 7Q of the Act also for belated remittance of contribution for the same period.

2. The appellant is a cashew factory. The appellant is regular and prompt in remitting contribution except for the period 01/2006 – 01/2007. Even for that period the appellant remitted contribution in time. The respondent authority initiated an enquiry under Sec 7A of the Act and directed the appellant to remit a further amount of Rs.5,04,650/-. The respondent assessed dues in respect of employees who were temporarily employed by the appellant. All those temporarily employed employees were enrolled to the fund through cashew factories owned by CAPEX and KSCDC. Since the respondent did not accept the contentions and issued Annexure A1 order, the appellant complied with Annexure A1 order. Hence it is very clear that the delay in remitting contribution was not wilful or deliberate. The respondent authority issued a show cause notice dated 25.10.2011 to the appellant to show cause

why damages as stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme shall not be levied for belated remittance of contribution for period 01/2006 – 01/2007. The appellant was also given an opportunity for personnel hearing on 08.11.2011. The appellant entered appearance and filed an objection dated 10.01.2011 and a further written statement on 23.01.2012. Ignoring the contentions taken by the appellant, the respondent authority issued the impugned order which is produced and marked as Annexure A2. Since the respondent organisation did not suffer any loss due to delay, there is no reason to demand and recover damages from the appellant. The respondent authority has not applied her mind to the facts and circumstances of this case and therefore the order issued by the respondent authority is a non-speaking order. The table of damages provided under Para 32A of EPF Scheme is only a guideline and is not mandatory to be followed in all cases. The respondent authority ought to have taken into consideration the relevant circumstances, the number of defaults, the extent of delay and the reason for delay. Though the appellant was not liable, remitted the contribution in

respect of temporary employees immediately after the Annexure A1 order is issued under Sec 7A of the Act. The respondent authority failed to consider the decisions of the Hon'ble High Court and Hon'ble Supreme Court that the damages can be reduced by the respondent authority considering the mitigating circumstances. Taking into account the interest paid by the respondent organisations to the employees, the damages and interests levied by the respondent authority is extremely high. A public sector undertaking like EPF organisations cannot afford to be a modern Shylock and flee the establishment in the grab of Sec 14B damages.

3. The respondent filed counter denying the above allegations. The appellant establishment is a chronic defaulter in remitting EPF and allied dues in respect of their employees. The appellant deliberately delayed remittance of PF dues. The claim of the appellant that they were regular in compliance and the default was not wilful is totally incorrect. There was delay in remittance of contribution for the period 01/2006 – 01/2007 which attracts damages under Sec 14B and interest

under Sec 7Q of the Act. The respondent issued notice dated 25.10.2011 to the appellant to show cause why damages shall not be levied as stipulated under 14B of the Act read with Para 32A of EPF Scheme. The appellant was also given an opportunity for personnel hearing on 08.11.2011. The appellant attended the hearing through its representative and filed a written statement. The appellant establishment failed to enrol a substantial number of employees to provident fund on the ground that they were temporary employees. The action on the part of the appellant was illegal and therefore the respondent authority initiated action under Sec 7A, assessed the dues and recovered the same from the appellant establishment. The non-enrolment of the employees was in violation of the provision of the Act and Scheme and was intentional. The appellant therefore cannot plead that there was no mensrea in belated remittance of contribution.

4. According to the learned Counsel for the appellant, the appellant establishment is regular in compliance except for the period for which these proceedings are initiated. The learned Counsel for the respondent on the other side argued

that the appellant establishment is a chronic defaulter and therefore deserves no sympathy. There is no evidence to support the case of the appellant or that of the respondent. The admitted fact is that the appellant establishment failed to enrol certain employees to provident fund membership for period from 01/2006 – 03/2008, on the ground that they were temporary employees and they were already enrolled to the fund through some other establishment. As rightly pointed out by the learned Counsel for the respondent, the argument of the appellant was not legally sustainable and therefore the respondent authority issued an order assessing the dues and recovered the same from the appellant establishment. Hence there was delay in remittance of contribution in respect of these non-enrolled employees, which attracted damages under Sec 14B of the Act read with Para 32A of EPF Scheme. The respondent authority therefore initiated action for assessing damages under Sec 14B and interest under Sec 7Q of the Act. It is seen from the impugned order that the appellant was given more than adequate opportunity to explain the circumstances for the delay in remittance. On a perusal of the

impugned order, it is seen that the main contest by the appellant was with regard to their liability to remit the damages. According to the learned Counsel of the appellant, the appellant establishment was run by another employer during the relevant point of time. The respondent authority elaborately considered the question and evidence to hold that the appellant only was running the establishment at the relevant point of time. With regard to the delayed remittance of contribution, the objection filed by the appellant only indicated unforeseen circumstances, scarcity of raw materials, financial crisis etc. However it is seen that the appellant failed to produce any documents to substantiate their claim. The respondent authority therefore through a speaking and elaborate order held that the appellant is liable to remit damages as per Para 32A of EPF Schemes and is also liable to pay interest under Sec 7Q of the Act.

5. In this appeal the learned Counsel for the appellant relied on the decision of Hon'ble Supreme Court in ***Assistant Provident Fund Commissioner, EPFO and Another Vs The Management of RSL Textiles India Pvt.***

Ltd., 2017(2) SCALE 33 to argue that the presence or absence of mensrea and/or actusreus would be a determinative factor in imposing damages under Sec 14B. The learned Counsel for the respondent on the other hand pointed out that the appellant establishment violated the provisions of the Act and Schemes when they failed to enrol substantial number of employees to the fund. Hence the appellant cannot argue that there is no mensrea in belated remittance of contribution. It is only because of the alertness of the enforcing agency of the respondent organisation that the non-enrolment was detected, assessed and recovered from the appellant establishment. The learned Counsel for the appellant also argued that levy of damages is discretionary and not mandatory. The learned Counsel for the respondent contested the above ground stating that the respondent authority has no discretion as claimed by the appellant and is constrained by Para 32A of EPF Scheme. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Madras in **Shanti garments Vs RPFC**, 2003 LLR 256 (Mad) that when there is no willful violation, the quantum of damages shall be more or less

compensatory. In this particular case, according to the learned Counsel for the respondent, there is willful violation of the provision of the Act and Schemes and the appellant establishment is not entitled for any relief. It is also pointed out by the learned Counsel for the appellant that the rate of damages imposed is excessive. According to the learned Counsel for the appellant, the order issued by the respondent authority is a non-speaking order as the objection raised by the appellant was not considered by the respondent authority. The Hon'ble High Court of Mumbai in ***Kiran B Dhingra Vs Union of India and another***, 2012 LLR 445 held that the non-consideration of the objections raised by the party before the quasi-judicial authority would be construed as non-application of mind by the authority. As already pointed out the main contest by the appellant before the respondent authority was with regard to the ownership of the appellant establishment at the relevant point of time. The respondent authority has elaborately considered the said issues and other issues raised before her and the case of the appellant that the impugned order is a non-speaking order cannot be accepted.

The learned Counsel for the appellant also argued citing the decision of the Hon'ble High Court of Kerala in ***Harrisons Malayalam Ltd Vs RPFC & Others*** in WP(C) No. 1399/2006 that liability to pay damages does not arise automatically, but the same shall be decided by applying mind objectively to the merits of each case. The decision relied on by the learned Counsel for the appellant is modified by the Division Bench and also by Hon'ble Supreme Court leaving the question of law open to be decided in an appropriate case.

6. The learned Counsel for the respondent relied on the decision of the Division Bench of Hon'ble High Court of Madras in ***Ms. Ramanathapuram District Co-Operative Printing Works Ltd. Vs EPF Appellant Tribunal***, WA(MD) No.525/2012 to argue that the damages levied as per the provisions of the Act and Scheme may not be interfered by this tribunal as it is mandatory that any delay in remittance of contribution will attract damages under Sec 14B and interest under Sec 7Q of the Act. In the above cited decision, the Division Bench of Hon'ble High Court of Madras found that mensrea or existence of actusreus to contravene a statutory

provision is relevant for levy of damages under Sec 14B. However the court held that in the special circumstances of that case the Division Bench is not interfering with the damages levied by the respondent authority confirmed by EPF appellant tribunal and Single Bench of Hon'ble High Court.

7. In this particular case, the only ground pleaded by the learned Counsel for the appellant is that the appellant was regular in compliance and the only instance where there was default was when the respondent authority pointed out that there was non-enrolment. The non-enrolment of employees culminated in Annexure A1 order under Sec 7A of the Act and according to the learned Counsel of the appellant, the appellant establishment remitted the contribution immediately after quantification of the same. According to the learned Counsel for the respondent, the non-enrolment of the employees itself is a clear violation of provisions of the Act and Scheme and therefore the appellant cannot claim that there is no mensrea in belated remittance of contribution. It was further pointed out by the learned Counsel for the respondent that the appellant cannot take advantage of the violation of the

provisions by arguing that the delay in remittance was due to delayed assessment of dues. There is indeed a point in the stand taken by the learned Counsel for the respondent. However, considering the fact that the appellant establishment was under a bonafide belief that the temporary employees need not be enrolled to the fund particularly when they are enrolled to provident fund through some other establishments. The appellant can be given some relief as far as damages are concerned.

8. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages assessed under Sec 14B of the Act

9. 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. Mary's 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.

10. Hence appeal is partially allowed, the impugned order under Sec 14B is modified and appellant is directed to remit 80% of the damages. The appeal against the claim of interest under Sec 7Q is dismissed, as not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer