



सत्यमेव जयते

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

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

APPEAL No. 775/2019

Appellant

M/s. Premier Marketing Agencies
TC 90/449, Plot No. 10
Industrial Development Area
Thiruvananthapuram – 695 021

By Adv. Appu Aravind V

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Pattom.P.O.
Thiruvananthapuram – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 28/04/21 and
this Tribunal-cum-Labour Court on 04/10/21 passed the
following:

ORDER

The appellant filed from appeal No. KR/TVM/1584958/
PD/2019-20/2170 dated 23/08/2019 assessing damages
under Section 14B of EPF and MP Act (hereinafter referred to as

‘the Act’) for belated remittance of contribution for the period 01/2017 to 5/2017, 07/2017 to 10/2017 and 01/2018 to 02/2019. Total damages assessed is Rs. 68,440/- (Rupees sixty eight thousand four hundred and forty only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant is an establishment covered under provisions of the Act. The respondent issued a show cause notice dated 27/06/2019 directing the appellant to show cause why damages stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme shall not be levied for belated remittance of contribution. The appellant was also directed to attend personnel hearing before the respondent on 25/07/2019. The appellant could not attend the hearing. The respondent issued the impugned orders without affording a reasonable opportunity of being heard. The damages levied are at a higher rate. The respondent authority issued the orders mechanically without considering the existence of mensrea in late deposit of contribution. The respondent ought

to have considered the mitigating circumstances while determining the damages.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted/delayed payment of statutory contribution during various months and these belated payments will attract damages under Sec 14B of the Act. A notice dated 27/06/2019 was issued to the appellant directing him to appear for personnel hearing on 25/07/2019. The appellant acknowledged the receipt of the summons. There was no representation or request seeking adjournment of the proceedings. No mitigating facts were brought out by the appellant during the proceedings under Sec 14B. The appellant did neither dispute the delay in remittance of contribution nor filed any objection regarding the delay statement forwarded to the appellant along with the notice dated 27/06/2019. The appellant has no case that wages were not paid or belatedly paid to its employees. Hence the employees share of contribution is already deducted from the salary of the employees and retained by him. In **Chairman, SEBI Vs Sriram Mutual Fund**, Civil Appeal No. 9523 -

9524/2003, the Hon'ble Supreme Court held that "*mensrea is not an essential ingredient for contravention of provisions of civil Act. Penalty is attracted as soon a contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of parties omitting such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in nature of fine under the provisions of the Act and the regulations would immediately attract levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not*". It is a statutory obligation on the part of the appellant to remit the contribution by 15 of the month following the month in which employee has worked in the establishment. The delay in remittance will defeat very purpose of social security legislation. The Hon'ble Supreme Court of India in **Organo Chemicals Ltd. Vs Union of India, 1979 (2) LLJ 416 SC** held that "*besides 50% of the contribution deposited late represented the employee share which had been deducted from the employees' wages, was the trust money with the employer for deposit in the statutory fund. The delay in deposit of this part of contribution amounted*

to breach of trust and does not entitle the employer for any consideration for relief”.

4. The only ground pleaded in this appeal by the appellant is that there was no mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the appellant had no case that salary is not paid or belatedly paid to its employees by the appellant. When salary of the employees is paid in time, the employees' share of contribution is also deducted from the salary of the employees. Non payment of employees' share of contribution deducted from the salary of the employee is an offence under Section 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution, at least to the extent of 50% of the total contribution. The other ground pleaded by the appellant is that they were not given adequate opportunity before issuing the impugned orders. It is seen that the respondent issued notice along with a delay statement to the appellant. The notice also provided an opportunity for personnel hearing on 25/07/2019. The appellant acknowledge

the notice. However failed to attend the hearing or atleast send a request seeking adjournment. The respondent authority therefore felt that the delay in remittance is admitted by the appellant and therefore issued the impugned order. Hence the appellant cannot claim that he was not provided adequate opportunity to represent his case, when he ignored the notices received from the respondent.

5. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued under Sec 7Q 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.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer