



सत्यमेव जयते

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

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

(Tuesday the 1st day of February, 2022)

APPEAL No.787/2019

Appellant : Abdul Azees M.
Proprietor
M/s.Palace Foods
Mankarathodi House
Panakkad, Pattarkadavu P.O.
Malappuram - 676519

By Adv.Varghese John

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Eranjipalam P.O.
Kozhikode - 673006

By Adv.(Dr).Abraham P. Meachinkara

This case coming up for final hearing on 17.11.2021 and this Industrial Tribunal-cum-Labour Court on 01.02.2022 passed the following:

ORDER

Present appeal is filed against order no.KR/KK/1512013/ENF-1(4)/14B/2019/2974 dt.22.08.2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated payment of

contribution for the period from 04/2015 to 02/2018 (Remittance made during the period from 24.10.2017 to 31.03.2019). The total damages assessed is Rs.2,64,694/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant was running a business of restaurant and was covered under the provisions of the Act. For the period from 04/2015 to 02/2018 the appellant could not remit the contributions as per the schemes due to financial difficulties of the appellant establishment. There was delay in remittance of contribution. The respondent issued show cause notice dt.14.06.2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. The appellant appeared before the respondent authority on 07.08.2019 and contended that there was no wilful delay and there was no mensrea on the part of the appellant. The respondent authority without considering the pleadings of the appellant issued the impugned order. The copy of the order dt.22.08.2019 is produced and marked as **Annexure A1**. The respondent authority also claimed interest. A copy of the order dt.22.08.2019 is produced and marked as **Annexure A2**. The appellant establishment is closed and the registration is cancelled w.e.f. 01.02.2018. A true copy of the cancelled registration

certificate issued by the Sales Tax authorities is produced and marked as **Annexure A3**. The respondent authority as per the impugned order have imposed damages and interest in a cursory manner at the maximum rate. There was no examination of the issues on merit. The Hon'ble High Court of Kerala in **EPFO Vs Sree Kamakshi Agency Pvt Ltd**, 2013 (2) KLT 996 held that facts of each case shall be examined by the respondent authority and the financial crisis of the appellant establishment is a relevant consideration while deciding the quantum of damages. The above position of the Hon'ble High Court was upheld by the Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd**, 2013 3 KLT 790. Sec 14B of the Act as it stands now is a penal provision and therefore the penalty can be imposed only when there was deliberate offence committed by the establishment. The Hon'ble Supreme Court of India in **APFC Vs Management of RSL Textiles Ltd**, 2017 3 SCC 110 held that presence or absence of mensrea or actus reus should be a determinative factor in imposing damages U/s 14B as also the quantum thereof.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions s of the Act. The appellant establishment failed to remit the contributions within the due dates as prescribed under Para 30 of EPF Scheme for the period from 04/2015

to 02/2018. The respondent therefore issued a notice directing the appellant to show cause why damages as envisaged U/s 14B of the Act should not be recovered. A detailed delay statement was also enclosed along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing on 07.08.2019. He admitted the delay in remittance. However he pleaded that the delay was due to financial problems of the appellant establishment. After taking into account the pleadings of the appellant, the respondent issued the impugned orders.

4. No appeal is maintainable against an order issued U/s 7Q of the Act.

5. The contention of the appellant that the damages U/s 14B is required to be reduced on the ground of financial difficulties is not legally sustainable. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The representative of the appellant who attended the hearing admitted the delay. Though the appellant establishment pleaded financial difficulties, no documents whatsoever was produced by the appellant before the respondent authority to substantiate their claim. The Hon'ble Supreme Court of India in

Chairman, SEBI Vs Sriram Mutual Fund and another, 2006 5 SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

6. The appellant establishment delayed remittance of contribution for the period 04/2015 to 02/2018. The respondent issued notice directing the appellant to show cause why damages U/s 14B of the Act shall not be levied for belated remittance of contribution. The respondent also forwarded a delay statement along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing, admitted the delay and pleaded that the delay in remittance of contribution was due to financial constraints of the appellant establishment. The appellant however failed to produce any document to substantiate their claim of financial difficulties. The respondent therefore issued the impugned orders U/s 14B and also 7Q.

7. In this appeal the learned Counsel for the appellant pleaded that the respondent authority failed to consider the facts of the present case and mitigating circumstances leading to delayed remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to produce any document to substantiate the claim of financial difficulties before the respondent authority. 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 U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 also held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 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 authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

8. The appellant however produced Annexure A3 order for cancellation of registration issued by the Commercial Tax office dt.03.07.2019 stating that the Sales Tax registration of the appellant establishment is cancelled w.e.f. 01.02.2018. According to the learned Counsel for the appellant, the establishment is closed due to the financial constraints of the appellant establishment. The learned Counsel for the appellant also pleaded that there was no mensrea in belated remittance of contribution and the delay in remittance was only due to the financial constraints of the appellant establishment during the relevant point of time. The learned

Counsel for the respondent pointed out that mensrea is not at all relevant in a proceedings U/s 14B of the Act. The Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 after referring to its earlier decisions in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **EPFO Vs The Management of RSL Textiles India (P) Ltd**, (2017) 3 SCC 110 held that

“ Para 17. Taking note of three-Judge Bench of this Court in **UOI 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 the payment of EPF contribution by the employer under the Act is a *sine qua non* for the imposing of levy of damages U/s 14B of the Act, 1952 and *mensrea or actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations and liabilities”.

9. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued demanding interest U/s 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.

10. It is true that the appellant failed to produce any documents to substantiate the financial constraints of the appellant establishment before the respondent authority. In this appeal the appellant produced a copy of the order issued by the Commercial Tax office dt.03.07.2019 to prove that the appellant establishment is closed w.e.f. 01.02.2018 and the Sales Tax Registration is cancelled w.e.f. that date. The learned Counsel for the respondent did not dispute the fact that the appellant establishment is closed. According to the learned Counsel for the appellant, the appellant establishment was closed due to financial constraints. Taking into account the fact that the appellant establishment is closed w.e.f. 01.02.2018, it is felt that the appellant deserves some consideration with regard to the levy of damages.

11. Considering the facts, circumstances, pleadings and evidence 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 U/s 14B of the Act.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer