



सत्यमेव जयते

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

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

(Monday the 28th day of February, 2022)

APPEAL No.92/2019

(Old no.790(7)2014)

Appellant : M/s.Meenachil Rubberwood Ltd
P. B. No.1424, Philadelphia
IPC Building, K. K. Road
Kanjikuzhy
Kottayam - 686004

By Adv.V. Krishna Menon

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Thirunakkara
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 02.12.2021 and this Industrial Tribunal-cum-Labour Court on 28.02.2022 passed the following:

ORDER

Present appeal is filed against order no.KR/KTM/15549/APFC/Penal Damages/2014/7125 dt.18.07.2014 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of

contribution for the period from 03/2008 to 07/2013. The total damages assessed is Rs.7,79,312/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal. The appeal was filed before EPF Appellate Tribunal, New Delhi and the same was admitted vide order dt.08.09.2014. The operation of the impugned order was stayed subject to deposit of interest U/s 7Q with the respondent within 4 weeks. It is not confirmed whether the interest demanded U/s 7Q is remitted by the appellant as directed by the EPF Appellate Tribunal.

2. The appellant is a company registered under the Companies Act and is covered under the provisions of the Act. The appellant establishment is engaged in the business of manufacturing and selling of treated rubber wood, treated rubber wood boards, furniture made out of processed rubber wood and interior decoration works. The appellant started as a public limited company promoted by Rubber Board. Now the appellant company is facing heavy financial stringency. As per the books of account, the company is continuously in loss from the year of inception. The accumulated loss of the company as on 31.03.2014 was Rs.441.41 Lakhs as against a share capital of Rs.182 Lakhs. The accumulated loss is more than the net worth of the company. A copy of the annual report for the year 2011-12 is produced and marked as **Annexure A1**. A copy of the balance sheet as on 31.03.2013 is

produced and marked as **Annexure A2**. Copy of the drafted balance sheet as on 31.03.2014 is produced and marked as **Annexure A3**. While so the respondent issued summons directing the appellant to show cause why damages shall not be levied U/s 14B of the Act for belated remittance of contribution for the period from 03/2008 to 07/2013. A representative of the appellant attended the hearing and explained the financial position of the appellant. The demand made for imposing damages is highly belated. Ignoring the contentions taken by the appellant, the respondent issued the impugned orders assessing damages and interest which are produced and marked as **Annexure A4** and **Annexure A5** respectively. The respondent failed to examine whether there is any intentional default in payment of contribution. Imposition of damages is not mandatory. Being penalty, the respondent authority ought to have looked into the circumstances that led to delayed remittance of contribution. After introduction of Sec 7Q w.e.f. 01.07.1997 the respondent has no justification for recovering damages U/s 14B of the Act. The respondent authority ought to have considered the financial constraints of the appellant before assessing damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment remitted contributions belatedly during the period 03/2008 to 07/2013. The respondent therefore issued notice dt.02.04.2014

directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was given an opportunity for personal hearing on 08.05.2014. The appellant acknowledged the notice and attended the hearing. The representative of the appellant admitted the delay in remittance and stated that delay in remittance of dues was caused due to heavy rise in raw material cost and stoppage of grant from Rubber Board. The Hon'ble Supreme Court of India in **Hindustan Times** case, AIR 1998 SC 688 held that financial problems cannot be a justifiable ground for an employer to escape the liability U/s 14B of the Act. There is no limitation for initiating enquiry U/s 14B of the Act. On a scrutiny of the records for the remittance made by the appellant for the period 03/2008 to 07/2013 shows that there are certain payments which are made after the respective due dates. The worksheet of delay in remittance is produced and marked as Exbt.R1. The claim of the appellant that no notice is issued to the appellant for the proceedings is not correct. A notice dt.02.04.2014 was issued to the appellant which is marked as Exbt.R2. The notice was acknowledged by the appellant on 05.04.2014. A true copy of the acknowledgement card is produced and marked as Exbt.R3. The financial constraints of an establishment is not a valid reason for delayed remittance of contribution. The Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Ltd**

Vs RPFC, 1982 LAB IC 1422 held that Para 38 of the scheme obliged the employer to make payments within 15 days of close of every month and Para 30 cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the member employed by him, in the first instance. Mensrea is not an essential ingredient for contravention of the provisions of a civil Act. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 5 SCC 361 held that intention of parties is not relevant while assessing penalty under a civil Act.

4. The appellant establishment delayed remittance of contribution during 03/2008 to 07/2013. The respondent initiated action U/s 14B to assess damages for belated remittance of contribution. A notice was issued to the appellant along with a detailed delay statement. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pointed out that the delay in remittance was due to the financial constraints of the appellant establishment. However no documents supporting the claim of financial difficulties was produced before the respondent authority. The respondent authority issued the impugned orders in terms of Sec 14B read with Para 32A and Sec 7Q of the Act.

5. In this appeal the learned Counsel for the appellant reiterated the stand that the delay in remittance was due to the financial constraints of the

appellant establishment. The respondent also produced the balance sheet for the year ending 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014. On a perusal of the balance sheet, it is seen that the appellant establishment is having a total asset of Rs.2.62 Crores in the year ending 31.03.2011, Rs.2.39 Crores for the year ending 31.03.2012, Rs.2.67 Crores for the year ending 31.03.2013 and Rs.2.47 Crores for the year ending 31.03.2014. It is also seen that the revenue income for the year ending 31.03.2011 was Rs.3.31 Crores and for the year ending 31.03.2012 it was Rs.3.37 Crores. For the year ending 31.03.2013 the revenue income was Rs.2.78 Crores and for the year ending 31.03.2014 the revenue income was Rs.2.29 Crores. The employees benefit expenses for the year ending 31.03.2011 was Rs.91.73 Lakhs and the year ending 31.03.2012 it was Rs.81.81 Lakhs. For the year ending 31.03.2013 it was Rs.97.71 Lakhs and for the year ending 31.03.2014 it was Rs.1.13 Crores. From the above it is very clear that the delay in remittance of provident fund contribution is not due to the financial constraints of the appellant establishment alone. There is absolutely no explanation why the employees' share of contribution deducted from the salary of the employees is not remitted in time. Non payment of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405/406 of IPC and the appellant has absolutely no justification for delaying the

employees' share of contribution deducted from the salary of the employees. The learned Counsel for the respondent pointed out that the financial statements now produced by the appellant cannot be relied since the same is not proved by a competent person before the respondent authority. The Hon'ble Supreme Court of India in **Petlad Turkey Red Dye Works Co Ltd Vs Dyes and Chemical Workers Union and others**, 1960 KHC 717 held that the current assets and liabilities of an establishment cannot be decided on the basis of the balance sheet figures unless those figures are proved through a competent person before the Court. The only ground pleaded by the learned Counsel for the appellant for delayed remittance of contribution is that of financial difficulties. The learned Counsel for the appellant relied on the decision of the Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 3 KLT 790. It is pointed out that in the SLP preferred by the respondent organisation against the above decision as S.L.P. (C) no.21174/2015, though the Hon'ble Supreme Court retained the percentage of damages, kept the question of law open to be decided in an appropriate case. The learned Counsel for the appellant also relied on the decision of the div ben of the Hon'ble High Court of Kerala in **Standard Furniture, Calicut Vs Registrar, EPF Appellate Tribunal and others**, 2020 3 KHC 793 to argue that the respondent authority shall take into account all the

factors before deciding the quantum of damages. It was also pointed out that financial constraints of the appellant establishment and mensrea are relevant considerations while deciding the quantum of damages. 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”.

6. Having discussed the law on the issue, it is relevant to point out that the appellant establishment was in loss from the very inception. As per the balance sheet, the loss as on 31.03.2011 was Rs.12.34 Lakhs and as on 31.03.2012 it was Rs.16.70 Lakhs. The loss as on 31.03.2013 is Rs.25.70 Lakhs and as on 31.03.2014 the loss was Rs.17.91 Lakhs. The cumulative loss of the

appellant establishment as on 31.30.2014 is Rs.441.41 Lakhs and the share capital of the appellant is only Rs.182 Lakhs. From the above facts, it is clear that the appellant establishment was running under loss from the very beginning and therefore the appellant establishment deserves some consideration as far as damages U/s 14B is concerned.

7. 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 70% of the damages.

8. On perusal of Sec 7(l) of the Act, it is seen that there is no provision U/s 7(l) 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(l) 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.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is direct to remit 70% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer