



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

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

(Tuesday the 11th day of May, 2021)

APPEAL Nos.115/2019 (Old No. ATA No. 1093 (7) 2014)
484/2019 (Old No. ATA No. 124 (7) 2016)

Appellant : M/s. Gem Lights
Guruvayoor Road, Punnamm
Trichur – 680 002

By Adv. P.R. Venkatesh

Respondent 1. The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

2. The Assistant PF Commissioner &
Recovery Officer
EPFO, Sub Regional Office
Kochi -682017

By Adv. Thomas Mathew Nellimmootil

This case coming up for final hearing on 26.03.2021
and this Tribunal-cum-Labour Court on 11.05.2021
passed the following:

ORDER

Appeal No. 115/2019 is filed from order No.
KR/ KCH/ 29283/ Damages Cell/2014/17659 dt.
27/08/2014 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 03/2011 to 12/2011 and 03/2013. The total damages assessed is Rs.1,26,261/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. **Appeal No. 484/2019** is filed from order No.KR/KCH / 29299 / Damages Cell / 2015 / 1115 dt. 06/11/2015 assessing damages U/s 14B of the Act, for belated remittance of contribution for the period from 03/2011 to 09/2013. The total damages assessed is Rs.3,77,484/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

3. Since common issues are raised in both the appeals the matter was heard together and disposed by a common order.

4. The appellant started its unit at Trichur in the year 2005. They started another unit at Kalamassery, Cochin in March 2011. The employment strength of the appellant establishment crossed 20 in March 2011 and the appellant

was coverable from the said date. An Enforcement Officer of the respondent inspected the appellant establishment at Kalamassery on 20/12/2012 and the appellant submitted a request dt. 31/12/2012 for allotting separate code number for Trichur and Kalamaserry branches for administrative convenience. The appellant was directed to submit an application through the Enforcement Officer at Trichur and accordingly a request dt. 10.05.2013 was submitted by the appellant. The respondent allotted separate code numbers vide letter dt.12.08.2013 and the appellant is regular in compliance from 12/12/2013 onwards. The respondent initiated action for levying damages and the appellant brought to the notice of the respondent authority that the delay in remittance of contribution was mainly due to the delay in allotment of separate code numbers to the appellant establishments. Without considering the representation of the appellant the respondent issued the impugned orders. In appeal No. 115/2019 there was a serious mistake in the impugned order. In the notice issued by the respondent the assessment period was shown as 01/03/2011 to 24/12/2013. However in the order issued by the respondent the assessment period is shown as 03/2011 to 12/2011. The

appellant therefore returned the order vide letter dt.14/03/2014 requesting the respondent to make necessary correction. A copy of the letter is produced and marked as Annexure A2. There was no response from the respondent. The respondent issued a demand notice dt.20/05/2014 intimating coercive action against the appellant. A copy of the said letter is produced and marked as Annexure A3. The appellant send another letter dt.31/05/2014 informing the respondent regarding the correction in the order a copy of which is produced and marked as Annexure A4. The respondent again issued a show cause notice for warrant of arrest. A copy of the same is produced and marked as Annexure A5. The appellant again requested the respondent to incorporate the necessary correction vide Annexure A6 letter. Since there was no other way the appellant filed WP (C) No.22858/2014 before the Hon'ble High Court of Kerala which was disposed off by the Hon'ble High Court vide judgment dt.01/08/2014 with a direction to the respondent that all coercive proceedings to enforce the impugned orders shall be kept in abeyance to facilitate the appellant to file appeal before EPF Appellate Tribunal. A copy of the judgment

of Hon'ble High Court in WP(C) No.22858/2014 is produced and marked as Annexure A7.

5. In Appeal no. 484/2019, the appellant moved the Hon'ble High Court of Kerala in W. P. (C) No. 36511/2015 against the impugned order pointing out the discrepancies in the impugned order. A copy of the writ petition is produced and marked as Annexure A4. The Hon'ble High Court granted an interim stay for a period of 2 months vide its order dt.02/12/2015. A true copy of the order is produced and marked as Annexure A6. The Hon'ble High Court of Kerala vide judgment dt.10/06/2016 finally disposed off W.P(C) No. 36511/2015 directing the appellant to remit the amount demanded U/s 7Q within a period of 2 months from the date of disposal of the Writ Petition as there can be no appeal against an order issued U/s 7Q of the Act. The Hon'ble High Court also directed the appellant to remit 1/3rd of the damages assessed U/s 14B of the Act. Within 3 months and subject to that the impugned order issued U/s 14B of the Act was stayed. The appellant remitted the amounts as directed by the Hon'ble High Court.

6. The respondent filed counter denying the above allegations. The appellant is an establishment engaged in the business of sale of electric and light fittings. M/s Gem Light, Trichur was covered w.e.f 01/03/2011 and a code number KR/KCH/29283 was allotted to the unit vide communication dt.22.07.2013. M/s. Gem Light, Kalamassery which is a branch of Trichur unit was covered vide notice dt.18/05/2012 and was given a separate code number KR/KCH/29299 vide proceedings dt.06/08/2013 as a branch unit as per Sec 2A of the Act. A copy of the same is marked as Exbt 1. The date of coverage of the establishment was 01/03/2011. Instead of remitting the contribution in code number KR/KCH/29283 the appellant vide their letter dt.01/03/2013 sought a separate code number for its Head Office at Trichur and branch at Kalamassery for administrative convenience. A copy of the letter dt. 01/03/2013 is marked as Exbt 2. Admittedly the employment strength of the appellant establishment crossed 20 during March 2011 and is statutorily coverable from the said date. Separate code numbers were allotted on a specific request by the appellant. Separate code number were allotted on administrative grounds and it will not affect the date of

coverage of the appellant establishment. The decision not to remit contribution was purely that of the appellant. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30, 36 and 38 of EPF Scheme to remit the monthly contribution payable under various scheme invariably within 15 days of close of every month in respect of all the eligible employees. Any delay in remittance of contribution will attract damages under S.14B of the Act. The Division Bench of the Hon'ble High Court of Karnataka in ***Star Construction and Transport Company Vs State of Mysore***, 1973 LIC 392 held that Sec 14B of the Act is punitive in nature and is meant to act as a deterrent to the defaulters from making further defaults. In ***M/s Organo Chemical Industries Vs Union of India***, 1979 AIR (SC) 1803 the Hon'ble Supreme Court held that the viability of the project depends on the employer duly deducting the workers contribution from their wages adding his own little and promptly depositing the mickle into the chest constitute by the Act. The mechanics of the system will suffer paralysis if the employer fails to performs his function. In ***Maharashtra State Co-operative Bank Ltd Vs Assistant PF Commissioner and Others***, 2009 (10) SCC 123 the

Hon'ble Supreme Court of India held that "any amount due from an employer" has to be interpreted keeping in view the object of the Act and the liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages if there is default in making contribution to the fund. If any amount payable by the employer becomes due and same is not paid within stipulated time then the employer is required to pay interest in terms of the mandate of Sec 7Q. Likewise default on employers part to pay any contribution to the fund can visit him with the consequences of levy of damages.

7. The facts of the case are not generally not disputed. The appellant is having its head office at Trichur and started functioning in 2005. They started a branch unit at Kalamassery, Cochin in March 2011. Admittedly the employment strength crossed 20 in March 2011. The appellant is therefore liable to remit contribution from March 2011 onwards. It is the responsibility of appellant establishment to start compliance once the statutory requirements are met. The appellant failed to do so. An Enforcement Officer of the respondent visited the appellant establishment and directed the appellant to start compliance

from March 2011. The appellant requested for allotment of separate code numbers for head office at Trichur and also the branch unit at Kalamassery. Respondent issued separate code numbers for administrative convenience U/s 2A of the Act on 06/08/2013. There was indeed delay on the part of the respondent in allotting separate code numbers to the branch unit as well as head office. However the appellant cannot escape the liability of remitting the contribution in time when the statutory requirements are met. According to the learned Counsel for the appellant, the appellant establishment delayed remittance of contribution due to financial constrains. However the appellant failed to produce any documents to substantiate their claim of financial difficulties from the due date of coverage that is from March 2011. The appellant approached the respondent for allotment of separate code numbers in 2012 and the code numbers were allotted by the respondent in 2013. To that extend the respondent cannot escape the liability for the delay. However it is settled legal position that allotment of code number is not mandatory requirement and Act and also Scheme provision do not provide for allotment of code number and therefore delay in allotment of code number by itself cannot

be attributed for delay in remittance of contribution. The learned Counsel for the appellant also raised an issue regarding the quantum of damages assessed. He cited the example of the remittance of provident fund contribution due on 15/04/2011 to argue that there is an equivalent of 66% damages being levied on belated remittance for the said month. The learned Counsel for the respondent pointed out that there was delay of 2 ½ years in remitting the contribution and damages are levied as per the Scheme provisions. As per the notice issued to the appellant by the respondent, the appellant is liable to remit 25% damages per annum for any delay beyond 6 months subject to a maximum of 100% as provided under the Act. Hence the appellant cannot plead that there is excess demand of damages as the delay in remittance is more than 2 ½ years in remitting the contribution. The learned Counsel for the appellant also pointed out that the levy of damages under 14B after demanding an interest @ 12% will amount to punishing the appellant twice for the same offense. According to the learned Counsel for the respondent Sec 14B and Sec 7Q are two independent sections and Sec 7Q is compensatory nature and Sec 14B is a penal provision as a

deterrent to the defaulters. Therefore it is not possible to argue that the appellant is being penalized twice for the same offense.

8. The learned Counsel for the appellant also pointed out that there is no element of mensrea in belated remittance of contribution. In the facts and circumstances discussed above it is true that the delay in remittance of contribution to certain extend cannot be considered as intentional. However the non- extension of benefits under the Act and Schemes to its employees from March 2011, once the appellant establishment satisfied the statutory requirements is in violation of the provisions of the Act. There was further delay in remittance even after allotment of separate code numbers to the appellant establishment. To that extend the appellant cannot escape the liability of remitting contribution in time and also the consequential liability to pay damages U/s 14B of the Act.

9. The learned Counsel for the respondent pointed out that the interest demanded U/s 7Q is not appealable. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the

Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be preferred against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in **St. Mary's Convent School Vs APFC**, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable. It is seen that there is a specific finding by the Hon'ble High Court in W.P.(C) 36511/2015 filed by the appellant that no appeal is maintainable from an order issued U/s 7Q of the Act and the appellant was directed to remit the same and the appellant had already remitted the interest U/s 7Q in both the appeals.

10. 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.

Hence the appeals are partially allowed the impugned orders are modified and the appellant is directed to remit 70% of the damages assessed as per the impugned orders. It is seen that the appellant had already remitted 1/3rd of the total damages in Appeal No. 484/2019 as per the direction of Hon'ble High Court of Kerala in W.P.(C) No. 36511/2015. The remittance already made shall also be taken into account while computing the damages at the rate of 70%.

Sd/-
(V. Vijaya Kumar)
Presiding Officer