



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

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

(Monday the 04<sup>th</sup> day of April, 2022)

**APPEAL No.455/2019**  
(Old No.ATA.111(7) 2016)

Appellant

M/s. V.K.L Seasoning Pvt. Ltd  
Beach Road, Alappuzha- 688012.

By Adv. R. Sankaran Kutty Nair

Respondent

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

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 30/03/2022  
and this Tribunal-cum-Labour Court on 04/04/2022 passed  
the following:

**ORDER**

Present appeal is filed from order No. KR/ KCH/75/  
Damages Cell / PJT / 2015 / 13956 dt. 09/12/2015 and  
order No. KR/ KCH /75 / Damages Cell/ PJT / 2015 /13955  
dt. 09/12/2015 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 12/1999 to

12/2013. The damages assessed as per order No. KR/KCH/75/ Damages Cell/ PJT / 2015 / 13956 is Rs. 42,235/- and the damages assessed as per order No. KR/KCH/Damages Cell/PJT/2015/13955 is Rs.1,34,712/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is an establishment engaged in the manufacturer and exporter of spices, chilly powder and other allied products. The appellant is covered under the provisions of the Act. The appellant received two summons on 05/01/2015 and the personal hearing was fixed on 02/02/2015. Copies of the summons are produced and marked as Annexure A1 and Annexure A2. Though in both summons it has been stated that claim is made for the period from 01/04/1996 to 31/03/2014, in one Annexure the claim was made for the period 12/1999 to 09/2009 and the another annexure the claim was for the period 02/2010 to 12/2013. Representative of the appellant attended the hearing and filed a written statement. Copy of the written statement is produced and marked as Annexure A3. After conducting the enquiry the respondent issued 2 separate orders U/s 14B and U/s 7Q on 09/12/2015. In one set of orders it is

stated that the damages and interest are assessed for 12/1999 to 12/2013 and in other set of orders it is stated that the claim is for 12/1999 to 09/2009. The order U/s 14B for the period from 12/1999 to 12/2013 is produced as Annexure 4 and the order U/s 14B for the period 12/1999 to 09/2009 is produced as Annexure A5. The respective 7Q orders are produced and marked as Annexure A6 and Annexure A7. The entire claim relates to the period from 12/1999 to 12/2013. Major portion of the claim relates to the period 12/1999 to 09/2009 for which period the damages is assessed to the tune of Rs.1,34,712/~. Though limitation is not applicable, the claim made by the respondent is highly belated. The appellant is not bound to keep the records for such a long period. In the assessment order for the period 02/2010 to 12/2013, it can be seen that the delay was only marginal for the few days. It was due to the delay in transfer of funds by the appellant's bank. There was no willful delay on the part of the appellant in belated remittance of contribution. Due to financial difficulties there was delay in payment of wages to the employees. There is no mensrea on the part of the appellant requiring to impose penalty.

3. Respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Due to delay in remittance of contribution for the period 12/1999 to 12/2013 the respondent initiated action for assessment of damages and issued four separate orders demanding damages and interest. The appellant challenged all the 4 orders in this appeal. As per Rule 10 of EPF Appellate Tribunal (Procedure) Rule 1997 an appeal shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. In view of the above the appeal is not maintainable under Rule 10 of EPF Appellate Tribunal (Procedure) Rule 1997.

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

5. Annexure A1 and A2 summons were issued by the respondent for determining damages and interest U/s 14B and 7Q for belated remittance of contribution. Though the period provided in the summons was from 01/04/1996 to 31/03/2014 the damages and interest were determined only for the defaults that actually occurred during the periods. Since there was delay in remittance of contribution the appellant is liable to remit damages

and interest. During the course of the enquiry the authorized representative of the appellant admitted the delay. The delay in remittance is reflected in Annexure A1 and A2 summons. The respondent authority during the course of enquiry excluded the periods for which there was no delay in remittance of contribution. The default by the appellant even includes the employees' share of contribution deducted from the salary of the employees. In **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act. The appellant failed to produce any documents to substantiate their claim of financial difficulties. The Hon'ble High Court of Kerala in **Joseph Vs Regional PF Commissioner**, 1962 (1) LLJ 745 KER the Hon'ble High Court of Kerala held that considerations of hardship have no place in construing clear provisions of the statute. In **Hindustan Times Ltd Vs Union of India**, 1998 (1) LLJ 682 the Hon'ble Supreme Court held that the financial difficulties of an establishment is no defense for delayed deposit of contribution. In **Public Prosecutor Vs P.S.S Somasundaram Chettiar**, 1961 (1) LLJ 281 the Hon'ble High Court of Madras held that liability of the employer of an establishment under the Act is

a kind of trust and its unwarranted infringement is a breach of trust. In **CP Kotak Bala Mandir Vs RPFC and Another**, SCA No. 3749 of 2011 the Hon'ble High Court of Gujarat held that mere existence of financial hardship is not sufficient explanation for delay in payment under the Act unless it is shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period . In **Ernakulam District Co-operative Bank Vs RPFC**, 2000 (1) LLJ 1662 the Hon'ble High Court of Kerala held that even though there is sufficient reason for the appellant to make belated payments, that is not a ground for granting exclusion from paying penalty or damages.

6. The learned Counsel for the respondent pointed out that the appeal is not maintainable as the same is filed in violation of Rule 10 of EPF Appellate Tribunal (Procedure Rules 1997). As per Rule 10

“ Plural remedies; An appeal shall be based on a single cause of action and may see one or more provided that they are consequential to one another”.

7. In this case it is seen that the appellant has challenged four separate order U/s 14B and 7Q of the Act. Two sets of the orders U/s 14B and 7Q pertains to two different periods and

therefore there are two separate cause of action. According to the appellant though two separate summons were issued the total damages and 7Q covers the period from 12/1999 to 12/2013. The only thing is separate summons were issued and separate orders were issued by the respondent authority. Since there are two sets of separate orders U/s 14B & 7Q the right course open to the appellant was to file separate appeals as per Rule 10 of EPF Appellate Tribunal (Procedure) Rules 1997.

8. The appellant raised another contention in the assessment of damages that though separate proceedings were initiated, it pertains to delay in remittance for the period 12/1999 to 12/2013. It can be seen from the annexures to Annexure A1 and A2 summons that in one proceedings the damages for the period 12/1999 to 09/2009 are assessed for belated remittance of contribution and in the 2<sup>nd</sup> proceedings the damages were assessed for delayed remittance of contribution for 02/2010 to 12/2013. According to the learned Counsel for the respondent though there is a mistake in the summons issued, the actual damages and interest were levied for the period from 12/1999 to 09/2009 and for the period from 02/2010 to

12/2013. Hence it is clear that there is no overlap in the periods of assessment of damages

9. The appellant also took a view that the assessment of damages, though not barred by limitation, caused prejudice to the appellant, as the appellant could not verify the correctness of the statement provided by the respondent authority. The learned Counsel for the appellant pleaded that there was delay in initiating the process U/s 14B of the Act. The learned Counsel for the respondent argued that there is no limitation as far as assessment of damages U/s 14B is concerned. The Hon'ble Supreme Court in **RPFC Vs KT Rolling Mills Pvt Ltd**, 1995 (10) LLJ 882, **Hindustan Times Vs Union of India**, 1998 (1) LLJ 682, and **M/s. K. Street Lite Electric Corporation Vs RPFC**, 2001 (1) LLJ 1703 held that there is no limitation provided U/s 14B of the Act and therefore introducing the concept of limitation in Sec 14B will be in violation of the legislative intention. The Hon'ble Supreme Court also pointed out that the delay in remittance related even to the contribution of the employees share which money, the respondent after deduction from the wages of the employees, must have used for its own purpose at the cost of those for whose benefit it was meant. Any different stand would only encourage the employers to



thwart to object of the Act. Hence the appellant cannot plead that there was delay in initiating the process for quantifying the damages and interest.

10. 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 prefer 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.

11. According to the appellant the delay in remittance of contribution for few months were due to the financial constraints of the appellant establishment. According to him during some of these months the salary of the employees were also delayed. The financial constraints and the delay in payment of salary should be

proved through documentary evidence before the respondent authority.

12. 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 the Hon'ble High Court of Kerala 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 RPF**, 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. In this case the appellant failed to produce any documents to substantiate the claim of financial difficulties and the delayed payment of wages.

13. According to the appellant there was no intentional delay in remittance of contribution and there was no mensrea. The learned Counsel for the respondent pointed out that the

appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code.

14. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act. In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and

mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

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

Hence the appeal is dismissed.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer