



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
( Friday the 17<sup>th</sup> day of September, 2021)

**APPEAL No.15/2019**  
(Old No. 35(7)/2011)

Appellant

M/s. Thavakkal Cashew Exports  
Kallumthazham P.O,  
Kollam – 691 004.

By Adv. Pallichal S.K Promod

Respondent

The Assistant PF Commissioner  
EPFO, Regional Office  
Parameswar Nagar  
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer  
Adv. Megha A

This case coming up for final hearing on 14/09/2021  
and this Tribunal-cum-Labour Court on 17/09/2021  
passed the following:

**O R D E R**

Present appeal is filed from Order No.  
KR/KLM/1473/PD/2010/11/5150 dt. 26/11/2010 assessing  
damages U/s 14B of EPF & MP Act,1952 (hereinafter referred  
to as 'the Act') for belated remittance of contribution for the

period 03/1994 to 02/2010. The total damages assessed is Rs.5,56,188/-. The impugned order is a composite order demanding interest U/s 7Q of the Act for the same period.

2. The appellant is a proprietary concern engaged in raw cashew processing. The appellant purchased the establishment in December 1997 and prior to that another cashew unit was functioning from the said premises. The appellant establishment was covered even prior to the appellant purchasing the unit. The appellant received a notice from the respondent alongwith a statement of accounts showing the date of remittance of provident fund contribution for the period from 03/1994 to 02/2010. Copy of the said notice is produced as Exbt A1. The appellant was also given an opportunity for personal hearing on 17/09/2010 and due to the ailment of the husband of the appellant she could not attend the hearing. The appellant did not receive any further notice. The representative of the appellant visited the office of the respondent on 09/11/2010 and the respondent issued a letter dt. 09/11/2010 directing the appellant to remit the damages. The enquiry was further posted on 19/11/2010. The representative of the appellant attended the hearing and

filed a written statement. Ignoring the contentions the respondent issued the impugned order. The respondent authority was acting in a prejudicial manner. It is clear from the fact that when the representative of the appellant visited the respondent's office on 09/11/2010 the respondent issued a letter directing the appellant to remit the damages. The respondent failed to exercise his discretion provided U/s 14B of the Act and Para 32A of EPF Scheme. The appellant is not an employer of the establishment upto 12/1997 and the damages is assessed for the period from 1994. Only the earlier employer will be in the position to explain the reasons for the delayed remittance of contribution. The earlier employer also should have been summoned in the enquiry. The respondent failed to consider the financial constraints faced by the cashew industry at the relevant point of time. There was a huge delay in initiating the process for assessing the damages. The appellant is prejudiced by the delay.

3. The respondent filed counter denying the above allegations. The appellant is the proprietrix of the appellant establishment. The appellant establishment delayed remittance of contribution and therefore the respondent

initiated action to assess damages and interest for delayed remittance of contribution. A notice dt.01/09/2010 was issued to the appellant to show cause why damages stipulated U/s 14B of the Act shall not be levied for delayed remittance of contribution. A detailed statement showing due date, belated payment date, monthwise dues and period of delay was also communicated to the appellant alongwith the notice. The appellant was also given an opportunity for personal hearing on 17/09/2010. Since there was no representation on the part of the appellant. The enquiry was adjourned to 04/10/2010, 20/10/2010 and 2/11/2010. On 9/11/2010 a representative of the appellant attended and requested time to remit the damages and interest. The daily order sheet dt.09/11/2010 was also given to the representative of the appellant and the enquiry was adjourned to 19/11/2010. Since no one appeared on 19/11/2010 and since the appellant has not raised any objection regarding the delay statement, the enquiry was concluded. An order issued U/s 7Q of the Act is not appealable and therefore no appeal is maintainable against the 7Q order. The appellant cannot plead the financial difficulties faced by the appellant

establishment for delayed remittance of contribution. Similar difficulties are being encountered by most of the establishments in the industry. Financial difficulties is not a satisfactory ground for default. In the case of **Sky Machinery Vs RFPC**, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient reason for waving penal damages for delay in depositing EPF contribution. In **Hindustan Times Vs Union of India**, 1998 (2) SCC 242 the Hon'ble Supreme Court of India held that financial difficulties cannot be a ground for delayed remittance of provident fund contribution. In **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1104 (P&H (DB) the Division Bench of the Hon'ble High Court of Punjab & Haryana rejected the plea of financial stringency and held that poor financial capacity is not a ground for not paying the contribution of its employees. As per notification No.SO 1553 the Assistant PF Commissioners are empowered to assess damages U/s 14B of the Act. The appellant was given more than adequate opportunity to represent their case and also contest the delay statement send alongwith the notice. The appellant failed to produce any documents to disprove the

claim of the respondent. The delay in assessing legal liabilities will not absolve the appellant from remitting the statutory dues payable under the Act.

4. During the course of hearing of this appeal, it is reported that the proprietor of the appellant establishment died on 17/09/2019, and an impleading petition was filed by her son Shri. Ansar Babu. The impleading petition allowed vide order dt. 03/02/2021 and Shri. Ansar Babu was impleaded as appellant in this appeal.

5. According to the learned Counsel for the appellant , the appellant purchased the establishment in December 1997. In this proceedings damages are being levied for the period from 03/1994 to 02/2010 and the respondent ought to have impleaded the earlier owner of the appellant establishment before assessing damages for the period from 03/1994 to 12/1997. According to the learned Counsel for the respondent, the appellant is liable for the damages U/s 17B of the Act. As per sec 17 B “ where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale , gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the

establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provisions of the Act or Scheme or the Pension Scheme or the Insurance Scheme as the case may be, in respect of the period upto the date of such transfer.

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer". In view of the above provision the appellant cannot escape the liability to pay damages for the period from 03/1994 to 12/1997. The learned Counsel for the respondent further pointed out that the appellant has not raised any such issue at the time of hearing and therefore the appellant cannot be allowed to agitate the same in this appeal. The learned Counsel for the appellant also pointed out that there was undue delay in initiating the process of assessment of damages. The learned Counsel for the respondent pointed out that there is no limitation as far as assessment of damages U/s 14B is concerned. In **RPFC Vs KT Rolling Mills Pvt. Ltd**, 1995 AIR (SC) 943, **M/s. K Street Lite Electronic Company Vs RPFC**, 2001 AIR SC 1818, **Hindustan Times Ltd Vs Union of India**, 1998 AIR (SC) 688 the

Hon'ble Supreme Court held that there is no period of limitation for initiating action U/s 14B and the delay will only facilitate the appellant to retain the funds or use the same in his business. The claim of the appellant is that the provident fund contribution could not be paid in time due to financial constraints. However the appellant failed to produce any document to support the claim of financial difficulties before the respondent authority as well as in this appeal. 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 **SreeKamakshi 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 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. The learned Counsel for the appellant pleaded that the appellant establishment closed from September 2009. In the written statement filed by the appellant before the respondent authority dt. 19/11/2010 also the appellant has taken a stand that the appellant establishment is closed in September 2009 because of huge liabilities and the physical problems of the appellant. No document is produced to substantiate the claim. The fact that the damages are being assessed for the period upto 02/2010 would clearly show that the appellant establishment was working atleast upto 02/2010.

6. The appellant failed to substantiate most of its claim before the respondent authority as well as in this appeal. The financial difficulties pleaded by the appellant is also not supported by any evidence. However, considering the pleadings and the financial situation of the appellant establishment and also the fact that the appellant establishment is already closed, it is felt that interest of justice will be met if the appellant is directed to remit 70% of damages.

7. The learned Counsel for the respondent pointed out that an appeal against an order issued U/s 7Q of the Act is not maintainable. 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) No.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

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of damages assessed U/s 14B of the Act. The appeal against Sec 7Q demand is dismissed.

Sd/-  
( **V. Vijaya Kumar** )  
Presiding Officer