



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

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

(Tuesday the 2nd day of November, 2021)

APPEAL No.186/2019

Appellant

M/s. Plantation Corporation of
Kerala Ltd.,
M/s. Chandanapally Estate
Nedumonkavu P.O, Koodal ,
Pathanamthitta – 639 673.

By Adv. Raju Vadakkekara

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Ajoy P.B

This case coming up for final hearing on
02/08/2021 and this Tribunal-cum-Labour Court on
02/11/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/ 2630 / TVM /PD/2014/4303 dt. 08/09/2014 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for belated remittance of contribution for the period 06/2000, 05/2001, 06/2001, 11/2011, 12/2001, 02/2003, 10/2001 & 04/2008. The total damages assessed is Rs. 9,05.722/-. The demand notice for interest U/s 7Q for the same period is also being challenged in this appeal.

2. The appellant is a company registered under the Companies' Act and is fully owned by Government of Kerala. Appellant is engaged in the business of planting rubber, cashew and other plantation crops. One of its estate, Chandanappally estate is situated within the jurisdiction of the respondent. Due to the crisis in plantation industry, the appellant was not able to pay the wages of its employee's in time. The situation had worsened to such an extent that the

appellant entered into an agreement with the Unions to forgo their wages in order to obviate a financial disaster and closure of the company. Pursuant thereto, a settlement was arrived at by the appellant with the Unions. The employees of the appellant agreed to forgo their salary for the period July to October 2001 and therefore no wages were paid for the months of May, June, July, October, November, December & February 2003 and other months. Since no wages were paid, no contributions were legally due from the appellant. The financial position of the appellant establishment gradually improved and in the year 2005 the appellant decided to pay salary to the workers. The appellant also promptly remitted contribution in respect of the months for which wages were paid. The impugned order is a non-speaking order and suffers from total non-application of mind. The respondent has failed to consider the circumstances leading to delayed remittance of contributions. As per provisions of the Act and EPF Scheme, contribution

is payable only on the wages actually drawn. Sub Clause (3) Clause 29 makes it expressly clear that the contribution shall be calculated on the basis of the basic wages, etc. actually drawn during the wage period. Clause 32 of EPF Scheme mandates that the member's contribution paid by the employer shall be recoverable by means of deduction from wages of the members and not otherwise. Clause 38 of the Scheme makes it expressly clear that the employer shall before paying the member his wages for any period deduct the employees' contribution from his wages which together with his own contribution and administrative charges be paid within 15 days of the close of the month. From the above, it is clear that, contributions are payable only in respect of wages which have actually been paid and not otherwise. The employees of the appellant had entered into a settlement to forgo their wages for the months of July to October 2001. Other months no wages were paid to the employees. The

respondent failed to exercise his discretion available to him U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant delayed remittance of contribution for 6/2000, 5/2001, 11/2011, 12/2001, 2/2003, 10/2001 and 04/2008. This belated remittance will attract damages U/s 14B of the Act. The respondent therefore issued a notice dt. 21/03/2014 to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing on 23/04/2014. A representative of the appellant attended the hearing and stated that the period shown in Annexure A1 as 01/2002 and 03/2004 are actually 01/2003 and 06/2004. The enquiry was adjourned to further dates on the request of the appellant to substantiate their claim. On

22/08/2014 the representative of the appellant submitted that the amount shown against 01/2002 pertains to 01/2003 and 05/2004 pertains to 06/2004 and produced challans for verification. He also submitted that for the period from 10/2001 there was an agreement with the employees to forgo salary and same was paid only in 2005. Though the appellant claimed that there was an agreement between the workers union and the appellant, the appellant failed to produce any document to substantiate the claim. A perusal of the impugned order will clearly show that the respondent authority considered the pleadings of the representative of the appellant and necessary corrections were incorporated in the delay statement on the basis of the evidence produced by the appellant. As per Para 30 (1) of EPF Scheme the employer shall in the first instance pay both the contributions payable by himself and also on behalf of the member employed by him. The Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416

SC held that even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be linked with the financial position of the establishment .

4. The issue involved in this appeal is delayed remittance of contribution for the months 06/2000, 05/2001, 06/2001, 10/2001, 11/2001, 12/2001, 02/2003 and 04/2008 and consequent assessment of damages U/s 14B of the Act. According to the learned Counsel for the appellant the delay in remittance of contribution was due to the financial crisis of the appellant establishment during the relevant point of time. According to him there was an agreement between the union and the appellant to forgo salary for the period from July to October 2001. Further it is pleaded that no salary/wages was paid to the employees for the rest of the months. However it is seen that the proceedings U/s 14B was initiated for delayed

remittance of contribution for the period 06/2000, 05/2001, 06/2001, 10/2001 to 12/2001, 2/2003 & 04/2008. The claim of the appellant that there was a agreement to forego wages from July to October 2001 do not exactly tally with the months for which damages are levied U/s 14B of the Act. No explanation is offered by the appellant for delayed remittance of contribution beyond July to October 2001. It is a settled legal requirement that the appellant shall produce relevant documents to substantiate the financial and other difficulties pleaded by them.

5. 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 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 appellant failed to produce any document to substantiate that :

- 1) There was an agreement between the union and the appellant to forego wages for the period July to October 2001.
- 2) To prove that no wages were paid during the relevant period .

- 3) The wages for the relevant period were paid only January 2005.
- 4) Documents to prove the financial difficulties of the appellant .

The learned Counsel for the appellant sighting Paras 29 (3), 32 & 38 of EPF Scheme argued that contribution are payable only in respect of wages which have been paid and not otherwise. The above question was considered by the Apex Court in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416. According to the Hon'ble Court

“ 33. The initial responsibility for making payment of the employer as well as of the employee, lies on the employer. Para 30 of the Scheme makes it incumbent on the employer that he shall, in the first instance,

pay both the contribution payable by himself and also on behalf of the member employed by him. Under Para 38, the employer is authorized before paying the member employee his wages in respect of any period or part of period for which contribution are payable, to deduct employee's contribution from his wages. It further provides that the deposit of such contribution shall be made by the employer within 15 days of the close of every month, ie, a contribution for a particular month has got to be deposited by the 15th

day of the month following. A breach of any of these requirement is made a penal offence”.

In the light of the binding decision of the Apex Court the contention of the appellant that it is liable to pay damages only if the contribution is remitted within 15 days from the end of the month in which it is deducted from the wages paid to the employees, cannot be accepted. Though the appellant failed to produce the agreement with the unions to forego wages for few months and evidence to substantiate the financial difficulties, the appellant being a public sector undertaking under the government of Kerala, It can be believed to a certain extend that the appellant was facing financial difficulties during the relevant point of time. However in the absence of evidence, the appellant cannot claim that there was no mensrea in belated remittance of

contribution. The appellant is therefore entitled for some relief as far as damages U/s 14B of the Act is concerned.

6. 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 assessed as per the impugned order.

7. 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.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer