



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Friday the 30<sup>th</sup> day of April, 2021)

**APPEAL No.235/2019**  
(Old No. ATA 1303 (7)2015)

Appellant : M/s. Kerala Tilery,  
Feroke Post,  
Kozhikode -673 631

By Adv. K . Abdussalam

Respondent : The Assistant PF Commissioner  
EPFO, Sub-Regional Office  
Eranhipalam P.O  
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on  
23/03/2020 and this Tribunal-cum-Labour Court on  
30/04/2021 passed the following:

**ORDER**

Present appeal is filed from Order No. KR/KK/233  
damages (2)2 14B/2015/6948 dt. 25/9/2015 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 01/2014 to 03/2015. The total damages assessed is Rs. 15,47,066/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a partnership firm engaged in tilery work. The establishment was covered under the provisions of the Act and was complying with the provisions of the Act satisfactorily. The economic depression, non-availability of market for the products, scarcity of raw material etc., has affected the financial position of the appellant establishment adversely. Now the appellant establishment is running on heavy loss. The intermittent lay off and lock out has also effected the financial health of the appellant establishment. In spite of the financial difficulties the appellant establishment complied with the provisions of the Act by remitting the contribution. When the appellant took over the management of the establishment in 1993 there was huge arrears of contribution to be paid to the respondent organization. The present management remitted the old arrears as well. The delay in remittance of contribution was

not wilful and there was no intentional delay on the part of the appellant in remitting the contribution. The Hon'ble High Court of Kerala has repeatedly emphasised that the assessment of damages U/s 14B of the Act is not automatic. The appellant is not a habitual defaulter and the respondent has no such case. The Balance Sheets for the year 2011-2012, 2012-2013, 2013-2014 and 2014-2015 will show that the loss of the appellant company was very huge. The respondent failed to exercise his discretion provided U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant committed default in remittance of provident fund contribution for the period from 01/2014 to 03/2015. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent therefore issued a notice dt. 10/06/2015 directing the appellant to appear on 18/08/2015 and show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. A representative of the appellant attended

the hearing and admitted the delay during the above period. After taking into account all the facts the respondent issued the impugned orders.

4. An order issued U/s 7Q of the Act cannot be challenged in an appeal U/s 7(I) of the Act.

5. The financial position as such cannot be considered for reducing or waiving penal damages. Financial ups and downs are part of every business however the appellant cannot take shelter under the claim of financial difficulties to violate the provisions of Para 30 & 38 of EPF Scheme. In ***Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC***, 1981 (1) LLJ 440 the Hon'ble High Court of Kerala held that even in case of lock out, strike etc failure to make contribution resulting in default will have to be visited by damages U/s 14B of the Act. The claim of the appellant that the damages are imposed mechanically is not correct. The appellant was provided adequate opportunity and also informed him regarding the delay before the impugned orders are issued. In ***RPFC Vs SD College Hoshiarpur and Others***, 1997 (1) LLN 520 the Hon'ble Supreme Court of India

held that the Commissioner has no power to waive damages altogether.

6. The main contention taken by the appellant in this appeal is that of financial difficulties. According to the learned Counsel for the respondent though the appellant pleaded financial difficulties they failed to produce any records before the respondent authority to substantiate their claim of financial difficulties. The appellant however produced the Balance Sheets for the year 2011-2012, 2012-2013, 2013-2014 and 2014-2015 to substantiate their claim of financial difficulties in this appeal. According to the learned Counsel for the respondent these documents, now produced, in the appeal may not be accepted as the appellant failed to prove the figures reflected in the Balance Sheets before the respondent authority during the proceedings U/s 14B. The learned Counsel for the respondent also submitted that in ***Aluminium Corporation Vs Their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the mere statements in Balance Sheet as regards current assets and current liabilities cannot be taken as sacrosanct.

The correctness of the figures as shown in the Balance Sheet itself are to be established by proper evidence through those responsible for preparing the Balance Sheet or by other competent persons. It is seen from the documents now produced that for the year ending 31/03/2012 the revenue income of the appellant establishment was Rs.1.29 crores and the employee benefit expenses were Rs.22.66 lakhs. For the year ending 31/03/2013 the revenue income was Rs.1.30 crores and employee benefit expense was Rs.22.33 lakhs. It is also seen that the employees and employers share of the provident fund contribution is also accounted in the Balance Sheets. For the year ending 31/03/2014 the revenue income was Rs.2.06 crores and employees benefit expenses was Rs. 20.90 lakhs. For the financial year ending 31/03/2015 the total revenue income Rs.1.37 crores and employee benefit expense was Rs.41.68 lakhs. From the above it is clear that financial difficulty by itself is not the reason for the delayed remittance of contribution. The learned Counsel for the respondent pointed out that from the documents now produced the appellant it is clear that salaries were paid in time and

provident fund is deducted and accounted in the books of the appellant establishment. However the same is not remitted with the respondent organization. The appellant has no case that wages of the employees were not paid in time. When the wages of the employees are paid, the employee's share of contribution which accounts for 50% of the total contribution is deducted from the salary of the employees. As already stated it is established in the Balance Sheets produced by the appellant that the employees' share is also deducted from the salary of the employees. The appellant failed to remit even the employees' share of contribution deducted from the salaries of the employees in time. Having failed to remit the contribution deducted from the salary of the employees in time the appellant has committed an offence U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution, at least to the extent of the employees share deducted from the salary of the employees.

7. The documents produced by the appellant would establish that the appellant establishment was under loss for the period from 2011-12 to 2014-15. The loss for the year 2011-12 was Rs.9.10 lakhs and for the year 2012-13 it was Rs. 21.57 lakhs 2013-14 the loss was Rs. 9.79 lakhs. For the year 2014-15 the loss was Rs. 43.01 lakhs and no explanation is forthcoming for such a jump in loss during the year 2014-15. However it can generally be seen that the appellant was under loss during the relevant period of time. Taking into account the financial constrains, the appellant is entitled for some relief in levy of damage.

8. Considering all the facts, pleadings, evidence and arguments in this case I am inclined to hold that interest of justice will be met if appellant is directed to remit 70% of damages assessed as per the impugned orders U/s 14B of the Act.

9. 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. The Hon'ble High Court of Kerala in ***St. Mary's Convent School Vs APFC***, WP (C) No.28924/2016 and in ***M/s ISD English School Vs EPF Organization and Another***, WP (C) No. 5640/2015 also held that an appeal against 7Q order is not maintainable.

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

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