



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Friday the 18<sup>th</sup> day of December, 2020)

**APPEAL No.237/2019**  
(Old No. ATA 1297(7)2015)

Appellant : M/s. Alzhemers & Related Disorders  
Society of India (ARDSI)  
Guruvayoor Road, Kunnankulam,  
Trichur - 680503

By Adv. P. Ramakrishnan

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

By Adv. Thomas Mathew Nellimmootil

This case coming up for final hearing on  
17.11.2020 and this Tribunal-cum-Labour Court on  
18.12.2020 passed the following:

**ORDER**

Present appeal is filed from order No. KR/  
KCH/29186/ Damages Cell /2015/579 dt. 15/09/2015  
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 02/2012 to 10/2013. The total damages assessed is Rs.43,048/-. 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 charitable society registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1955. The appellant is also a resource organization and consultant for training and setting up of Alzheimer's day care and full day care centres and for training staff for these programmes. The appellant was brought under the coverage of the Act with effect from 2011. The appellant received a notice from the respondent alleging delay in remittance of contribution. The appellant filed a written statement dt.16/02/2015. Ignoring the above written statement the respondent issued another notice directing the appellant to be present in the enquiry. The appellant attended the hearing and filed another statement which is produced and marked as Annexure A2. The appellant received another notice directing the appellant to attend

the hearing on 21/05/21015. The appellant attended the hearing and filed one more statement which is produced and marked as Annexure A3. The appellant pointed out to the respondent that the appellant is an establishment which is running on charity provided by family members of Alzheimer's patient. In spite of the financial difficulties the appellant remitted the contribution immediately on receipt of the registration. Since there was no possibility of recovering the employees share of contribution, the same was also paid by the appellant. Ignoring all the above contentions the respondent issued the impugned orders. The respondent ought to have seen that there was no mensrea or criminal intend on the part of the appellant for delayed payment of contribution.

3. The respondent filed counter denying the above allegations. The appellant defaulted the payment of statutory contributions for the period from 02/2012 to 10/2013. These belated payments will attract damages U/s 14B of the Act. The Hon'ble Supreme Court Of India in **Chairman SEBI Vs Sriram Mututal Fund** held that

mensrea is not an essential ingredient for contravention of provision of Civil Act. It was also clarified in the judgment that the penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and regulation is established. Hence the intention of parties committing such violations becomes irrelevant. **In Ernakulam District Co Operative Bank Vs RPFC**, 2000(1) LLJ 1662 the Hon'ble High Court of Kerala held that there may be sufficient reason for the appellant to make belated payments. However that is not a ground for granting exemption for paying penalty or damages.

4. According to the learned Counsel for the appellant the appellant establishment is a charitable society, facilitating Alzheimer's patient to lead a normal life. The society has no income other than the donations given by the relatives of the patients. While so the appellant establishment is covered in 2013 from an earlier date. The appellant remitted both the contributions immediately on receipt of the coverage memo. The respondent did not deny the fact that the

appellant establishment is covered in 2013 retrospectively from 2012. Though the allotment of code number is not relevant for compliance under the provision of the Act, it was not possible during those days to remit contribution without code number allotted by the respondent. The claim of the appellant that the contributions were paid immediately after the registration under the Act was also not denied by the respondent. The claim of the respondent that the employees' share is deducted from the salary of the employees is denied by the appellant and according to them both the contributions employer as well as employees, were paid by the appellant. In this circumstance of this it is not possible to allege any intentional delay or mensrea in delayed remittance of provident fund contribution.

5. Considering the facts, circumstances, evidence and arguments, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

6. The learned Counsel for the appellant 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 Ltd Vs RPFC**, 2013 16 SCC 1 the Hon'ble Supreme Court held that

“On an scrutiny of Sec 7(I), we notice that language is clear and unambiguous and it does not provide for an appeal against the determination made U/s 7Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and therefore, for maintainability of appeal there must be authority of law. This being the position, a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these interpretation it is bound adversely effect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless

expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provision. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to the express words. To it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute”.

The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, WPC No. 234/2012 also held that no appeal is maintainable from an order issued U/s 7Q.

Hence the appeal against Sec 14B order is partially allowed, impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

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