



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

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

(Thursday the 7th day of October, 2021)

**APPEAL No.26/2020**

Appellant

M/s. Babu Cherian  
Thalakupathil House  
Mutholy P.O, Puliyanoor,  
Kottayam – 686 573.

By Adv. C.B Mukundan &  
Adv. M.P Mathew

Respondent

The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam -686 001

By Adv. Joy Thattil Itoop

This case coming up for final hearing on 05.07.2021 and this Tribunal-cum-Labour Court on 07.10.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/ KTM / 1871912 /APFC/Penal Damage/14-B/2019-2020/11181 dt. 10/01/2020 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 04/2017 to 07/2019. The total damages assessed is Rs. 3,90,697/-.

2. The interest of demanded U/s 7Q of the Act for the same is also being challenged in this appeal.

3. The appellant is an establishment engaged in retail business of cement in various companies. The appellant was regular in compliance from date of coverage. However it is true that on account of acute financial difficulties, the appellant could not remit the contribution in time for the period from 04/2017 to 07/2019. The construction industry was facing acute financial crisis during the

relevant period of time. The appellant establishment was in the business of supplying cement to various projects. Because of the recession many of these projects could not be completed on time. The appellant received a summons from the respondent authority along with a delay statement. A copy of the same is produced and marked as Annexure A3. A representative of the appellant attended the hearing and explained the reason for delay and also filed a written statement, a copy of which is produced and marked as Annexure A4. The appellant tried to remit the contribution in November 2011. But he could not succeed due to technical problems in getting the digital signature approved by the office of the respondent. The appellant was unable to login with the ID and password provided to them. The appellant approached the respondent's office immediately, with a request to rectify the problem. Even after several requests, the respondent did not attend to the problem. The appellant explained the real factual position at the time of hearing and there is no mensrea in delayed remittance of contribution. The respondent failed to follow circular No. PF/ Cell/3(3)P-6/ BAM dt.29/05/1990 issued by their headquarters stating that 14B also includes interest chargeable U/s 7Q of the Act . The above circular was approved by the Hon'ble High Court of Delhi in **Systems and Stamping and Another Vs EPF Appellate Tribunal**, 2008 LLR 485. The respondent failed to exercise its discretion available to him U/s 14B of the Act as well as Para 32A of EPF Scheme. In **Employees State Insurance Corporation Vs HMT Ltd**, 2008 (1) LLJ 814 the Hon'ble Supreme Court held that when a discretion was conferred on a statutory authority to levy penal damages, the provisions could not be construed as imperative. The existence of mensrea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and / or quantum of damages. The Hon'ble High Court of Madras in **V.S Murugan Vs RPF**, 2011 (4) LLN 778 held that simply because the statutory provision enables an authority to impose penalty, it does not mean that such penalty should be imposed in a mechanical manner without looking into the attending circumstances and the fact as to whether there was any mensrea on the part of the employer.

4. The respondent filed counter denying the above allegations. As admitted by the appellant, there was delay in remittance of provident fund contribution. The respondent therefore initiated action for assessing damages for belated remittance of contribution. The respondent issued notice to the appellant along with Annexure A3 delay statement. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed Annexure A4 written statement. After considering the representation, the respondent authority issued the impugned orders assessing damages and interest. The Hon'ble Supreme Court of India in **Organo Chemicals India Ltd Vs Union of India**, 1979 (9) 0020 LLT 0416 SC held that even if it is assumed there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. The appellant failed to produce any documents along with Annexure A4 letter to support and prove their claim of financial difficulties. The appellant establishment was covered in April 2017 under the provisions of the Act. The fact that the appellant raised the issue of technical problems only in 2019, would prove the element of mensrea in delayed remittance of contribution. The appellant has not disclosed the details of financial crisis by producing relevant documents. The Hon'ble Supreme Court of India in **Hindustan Times Vs Regional PF Commissioner**, AIR 1998 SC 688 held that financial problems cannot be a justifiable ground for the employer to escape or delay provident fund liability. In **Organo Chemicals case** (supra) the Hon'ble Supreme Court held that there is nothing in the section to show that damages must bear relationships to the loss which is caused to the beneficiaries under this scheme. The circular dt.29/05/1990 has no relevance after the amendment of EPF Scheme and particularly after introduction of the sliding table.

5. There is no dispute regarding the fact that there was delay in remittance of provident fund contribution by the appellant establishment. According to the appellant one of the reasons for delay is the financial difficulties

of the appellant establishment. However the appellant failed to produce any documents along with Annexure A4 written statement before the respondent authority. So the financial difficulties pleaded by the appellant was not considered by the respondent authority. 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.

6. Another ground pleaded for the belated remittance of contribution is the technical issues faced by the appellant establishment after notification of coverage of the appellant under the provisions of the Act in April 2017. According to the learned Counsel for the appellant, the appellant establishment tried to remit the dues in November 2011 (?). The appellant establishment is covered under the provisions of the Act only in April 2017. Hence the claim of the appellant that they made an attempt to remit the contribution on November 2011 cannot be accepted. Assuming that it is a clerical error and the appellant made an attempt to remit the contribution in November 2017, there is no proof regarding any technical difficulties during that point of time and any attempt made by the appellant to correct the same. As rightly pointed out by the learned Counsel for the respondent, some technical problems were brought to the notice of the respondent on 16/01/2019 for the first time. Therefore the appellant cannot plead that the delay from April 2017 to March 2019 was due to technical issues. If the claim of the appellant is right, it is to be taken that the appellant deliberately

delayed the correction of the technical issues by more than 2 years with an intention of delaying remittance of contribution. This position was clarified by the respondent in the impugned order itself. The learned Counsel for the respondent also pointed out that the appellant has no claim that there was delay in payment of wages to its employees. When wages are paid the employees' share of contribution, which accounts for 50 % of the total contribution, is deducted from the salary of the employees. Non remittance of employees' share of contribution deducted from the salary of the employees is criminal offence U/s 405 & 406 of Indian Penal Code. On perusal of the Annexure A3 delay statement, it is seen the delay in remittance varies from 665 days to 30 days and the average delay is approximately 365 days. It is clear, therefore, that the appellant was holding the employees share of contribution deducted from the salary of the employees for more than a year. The appellant cannot therefore plead that there was no mensrea in delayed remittance of contribution atleast to the extent of employees' share of contribution deducted from the salary of the employees .

7. The learned Counsel for the appellant also raised a contention that the headquarters of the respondent organization vide a circular dt. 29/05/1990 informed the Commissioners that the damages U/s 14 B also include interest chargeable U/s 7Q of the Act. It was also argued that the Hon'ble High Court of Delhi in **Systems and Stamping and Another** (Supra) approved the above said circular. The circular has no relevance after amendment of this Scheme w.e.f 01/09/1991 and introduction of a sliding table under Para 32A vide amendment dt. 26/09/2008.

8. 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.

9. Considering the facts circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned orders .

Hence the appeal is dismissed.

Sd/-

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