



सत्यमेव जयते

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

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

(Wednesday the 2nd day of December, 2020)

APPEAL No.286/2019

Appellant

M/s. Thekkady Lakeshore Inn
Thekkady Road,
Kumily - 685509

By Adv. C.B. Mukundan

Respondent

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

By Adv. Joy Thattil Itoop

This case coming up for final hearing on
14.10.2020 and this Tribunal-cum-Labour Court on
02.12.2020 passed the following:

ORDER

Present appeal is filed from order No. KR/
KTM/20485/ APFC / Penal Damage/14B/2019-20/437
dt. 26/04/2019, 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 02/2010 to 05/2018. The total damages assessed is Rs. 4,20,787/-. 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 proprietary concern running a hotel. The appellant was engaging some casual and temporary employees. Those employees were not enrolled to provident fund on a bonafide relief that the temporary employees need not be enrolled to provident fund. Hence the appellant did not take any action to cover them under the provisions of the Act. During on routine inspection by the Enforcement officer of the respondent, it was pointed out that temporary employees also will have to be taken into account for the purpose of coverage of an establishment. Accordingly the appellant establishment was covered under provision of the Act w.e.f 02/2010. The respondent initiated an enquiry U/s 7A and vide an order dt. 18/10/2016 the dues were assessed to the tune of Rs.6,12,942/- for the period from 02/2010 to 01/2016. The copy of the 7A order is

produced and marked as Annexure A3. The appellant remitted the employees as well as the employers contribution as it was not possible to deduct such huge amounts from the employees. The respondent thereafter issued summons dated 27/12/2018 directing the appellant to show cause why damages U/s 14B shall not be assessed for belated remittance of contribution for the period from 02/2010 to 05/2018. A detailed statement of delay was also enclosed along with the summons which is marked as Annexure A4. The appellant filed a written statement pointing out that as per the statement the entire amount was treated as dues for the month of February 2010 and period of delay has been computed accordingly. The respondent was also requested to correct the statement and recalculate the damages and interest. It was also pointed out that the appellant was running under heavy loss during the relevant point of time. The true copy of the written objection and copies of the Balance Sheet are produced and marked as Annexure A5 and A6 series. The head office of the respondent vide Circular dt. 29/05/1990 has pointed

out that the 14B amount includes the 7Q interest also. The Hon'ble High Court of Delhi in **Systems & Stamping Vs. EPF Appellate Tribunal**, 2008 LLR 485 held that the damages U/s 14B includes interest U/s 7Q also. In view of the facts and circumstances this case, there is no mensrea in delayed remittance of provident fund contribution. The Hon'ble High Court of Madras in the following cases held that the existence of mensrea is a must for levy of penalty.

1. **Terrace Estate , a Unite of United Plantation Ltd. Vs Assistant Provident Fund Commissioner** , 2010 LLR 612
2. **Soliadire India Limited Vs Employees Provident Fund Appellate Tribunal**, 2011 (3) CLR 646
3. **V.S. Murugan Vs Regional Provident Fund Commissioner** , 2011 (4) LLN 778.

3. An authority U/s 14 B of the Act has the discretion to levy damages taking into account the circumstances of each case. In **Employees State Insurance Corporation Vs. HMT Ltd**, 2008 (1) LLJ 814 (SC) the Hon'ble Supreme Court held that when a

discretion was conferred on statutory authority to levy damages, provision could not construed as imperative.

4. The respondent filed counter denying the above allegation. The appellant is an establishment covered under the provision of the Act. The appellant committed delay in remittance of contribution for the period from 02/2010 to 05/2018. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The appellant did not enrol eight temporary employees for more than 6 years. The claim of the appellant that they bonafidely believed that these employees need not be enrolled to provident fund is not an acceptable excuse. The contention of the appellant that the entire amount of provident fund remittance was treated as dues for the month of 02/2010 is denied by the appellant. The above clarification is reflected in the impugned order itself. The fact regarding financial difficulties was not pleaded before the 14B Authority. The non production of any evidence regarding financial difficulties clearly indicate

mensrea, warranting levy of penal damages. The appeal against Sec 7Q demand of interest is not maintainable.

5. It is seen that the present appeal is filed mainly on three grounds. The first ground is that the lumpsum payment made by the appellant was treated as dues for the month of February 2010 and the delay has been computed accordingly. The case of the appellant is that there was an assessment in respect of eight non enrolled employees to tune of Rs.6,12,942/-. This assessment was made for the default period from 02/2010 to 01/2016. According to the learned Counsel for the appellant the whole remittance made by the appellant was treated as the dues for February 2010 and the delay was also computed accordingly. According to the learned Counsel for the respondent the Annexure A4 delay statement will clearly show that the allegation of the appellant is not correct. He also submitted that this issue was raised before the 14B authority and the same is clarified in the impugned order itself. The second issue raised by the learned Counsel for the appellant is that the respondent failed to follow the Circular dt.

29/05/1990 issued by the head quarters of the respondent. The learned Counsel for the respondent pointed out that the circular as well as the decision of the Delhi High Court is no more relevant after the amendment of the scheme in 1990. He also pointed out that the damages component is substantially reduced after the amendment and the Circular dt. 29/5/1990 cannot be pleaded as a ground for reducing the damages. The third ground pleaded by the appellant is that of financial difficulties. The Profit and Loss account produced by the appellant gives an indication that the appellant was under financial constraints during the relevant point of time. However the financial constraint by itself cannot be an absolute reason for delayed remittance of contribution. Another ground pleaded by the learned Counsel for the appellant is that there was no mensrea in belated remittance of contribution. As already pointed out the substantial delay in remittance of contribution is due to the fact that 08 temporary employees were not enrolled to provident fund from 02/2010 to 01/2016. The assessment order U/s 7A of the Act was issued on

02/11/2016 and according to the appellant both the contributions, in respect of the employer as well as employees were paid by the appellant himself. The learned Counsel for the respondent pleaded that non-enrolment of eligible employees itself is an offence under the Act and the appellant cannot plead that ground to argue that there was no element of mensrea in belated remittance of contribution.

6. Considering all the facts, circumstances and pleadings 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 against an order issued U/s 7(O) of the Act. On 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. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is provided U/s 7(I) from an order issued U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, WP (C) No. 234/2012 the

Hon'ble High Court of Kerala also held that no appeal can be filed from an order issued U/s 7Q of the Act.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer