



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

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

(Monday the 8th day of November, 2021)

APPEAL No. 294/2019

Appellant

M/s. Quilon Automobile Employee's
Co-operative Society Ltd., No. Q-797
Amabalathumbhagom.P.O,
Poruvazhy , Kollam - 691 553.

By Adv. B. Mohan Lal

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
04/08/2021 and this Tribunal-cum-Labour Court on
08/11/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/TVM/12613 /PD/2019-20/ 1188 dt. 03/06/2019 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 09/2014 to 02/2019. The total damages levied is Rs. 6,09,018/-. 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 society registered under Kerala Co-operative Societies Act and was running stage carriers. The appellant is covered under the provisions of the Act. The respondent issued a notice dt.03/05/2019 U/s 14B of the Act directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant submitted a letter on 28/05/2019 stating that they could not deposit the contribution in time due to acute

financial crisis and heavy loss suffered by them during the relevant point of time. It was also pointed out that the appellant establishment is running under heavy loss due to increase in cost of diesel, spare parts and the hike in wages of the employees. It was also pleaded that there was no intentional delay. It is settled legal position that there shall be a finding regarding mensrea before imposing damages. The respondent authority cannot levy damages mechanically since he is bound to take into account mitigating circumstances while determining damages. The calculation of U/s 7Q w.e.f 11/2017 is not correct. Due to acute financial difficulties the salary and other statutory payments were also delayed. There is no contumacious and dishonest conduct on the side of the appellant. In **Hindustan Steel Ltd Vs State of Orissa**, AIR 1970 SC 253 the Hon'ble Supreme Court held that mensrea is a relevant factor while deciding the quantum of damages. The levy of damages U/s 14B is barred by limitation as it was initiated after a lapse of more than 3

years. There is no finding by the respondent authority that the delay in remitting provident fund contribution was wilful and deliberate. According to Sec 14B, as it stands now, is purely punitive in nature. Therefore the respondent ought to have followed the directions given by the Hon'ble Supreme Court in **Hindustan Steel Ltd Vs State of Orissa**, AIR 1970 SC 253. In **Harrison Malayalam Ltd Vs Regional PF Commissioner**, 2012 (1) KHC 243 the Hon'ble High Court of Kerala held that merely because there is delay in payment of contribution, liability to pay damages does not arise automatically, but the same shall be decided by applying mind objectively on the merits of each case,

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act. The appellant defaulted in remittance of contribution for the period 09/2014 to 02/2019. The delay in remittance of contribution will attract damages U/s 14B of the Act.

Accordingly a summons dt. 03/05/2019 was issued to the appellant to show cause why damages shall not be levied. The appellant was also given an opportunity for personal hearing on 28/05/2019. A detailed delay statement was also furnished to the appellant. None attended the hearing on 28/05/2019 but a letter is received from Secretary of the appellant establishment which is taken on record and duly considered by the respondent authority. The appellant stated that they could not deposit the dues in time due to acute financial crisis and heavy loss suffered by them during the above period. The delay in remittance was not intentional. The respondent authority examined the representation and considered the same in the impugned order. The delay in remittance ranges upto 1473 days and cannot be seen as due to financial problem alone. There was no dispute on the part of the appellant regarding the delay statement. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (002) LLJ 0416 (Supreme Court) 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 allowed to be linked with financial position of the establishment, over different points of time. Besides 50% of the contribution deposited late represented the employees’ share which had been deducted from the employees’ wages and was trust money with the employer for deposit in the statutory fund. The delay in deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration for relief ”. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provision of civil Act. It is not correct to say that the appellant was denied the opportunity. The appellant did not attend the proceedings and filed a written statement which

was considered by the respondent authority while issuing the impugned orders.

4. The demand of interest U/s 7Q of the Act is not appealable.

5. Admittedly there was delay in provident fund contribution by the appellant establishment. The respondent therefore initiated action U/s 14B of the Act. Issued summons to the appellant establishment alongwith the detailed statement of delay. The appellant was also given an opportunity for personal hearing. The appellant did not attend the hearing but filed a written statement which was taken into account by the respondent authority while issuing the impugned order.

6. The main contention made by the learned Counsel for the appellant is that the delay was due to the financial difficulties of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant

failed to produce any documents before the respondent authority to substantiate their claim of financial difficulties. It is seen that appellant did not produce any documents to substantiate financial difficulties in this appeal also. 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.

In view of the above authorities the issue of financial difficulties raised by the appellant can be considered only if it is supported by documentary evidence. Since the appellant failed to substantiate their claim of financial difficulties the same cannot be accepted.

7. The second point raised by learned Counsel for the appellant is with regard to lack of mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Though the appellant pleaded that there was delay in payment of wages to its employees, the pleading is not supported by any evidence and there it is not possible to accept the claim. When the salary of the employees are paid the employees' share of contribution is

deducted from the salary of the employees. Non remittance of employees' share of contribution deducted from the salary of the employees is a criminal offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea or intentional delay in delayed remittance of contribution atleast to the extent of 50% of the total contribution. The learned Counsel for the respondent also argued that the appellant violated Para 30 & 38 of EPF Scheme and therefore cannot argue that there was no intentional delay in remittance of contribution.

8. The third issue raised by the learned Counsel for the appellant is with regard to delay in initiating the proceeds U/s 14B of the Act. According to the learned Counsel, the appeal is barred by limitation. The learned Counsel for the respondent pointed out that action under 14B can be initiated only after remittance of the dues by the appellant and

therefore there is no delay in initiating the process. The Hon'ble Supreme Court in **RPFC Vs KT Rolling Mills Pvt Ltd**, 1995 (10) LLJ 882, **Hindustan Times Vs Union of India**, 1998 (1) LLJ 682, and **M/s K Street Lite Electric Corporation Vs RPFC**, 2001 (1) LLJ 1703 held that there is no limitation provided U/s 14B of the Act and therefore introducing the concept of limitation in Sec 14B will be in violation of the legislative intention. The Hon'ble Supreme Court also pointed out that the delay in default related even to the contribution of the employees which money, the respondent after deduction from the wages of the employees, must have used for its own purpose at the cost of those for whose benefit it was meant. Any different stand would only encourage the employers to thwart to object 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) No. 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.

10. Considering the fact that the appellant failed to produce any documents to support the financial constrains during the relevant point of time, it is not possible to consider the plea of the appellant for reduction or waiver of damages. Taking into the facts, circumstances pleadings and evidence in this appeal, I am not inclined to interfere with the

impugned order U/s 14B of the Act. As already pointed out, the appeal against 7Q order is not maintainable.

Hence the appeal against 14B order is dismissed as the claim of the appellant is not substantiated. The appeal against 7Q order is dismissed as the same is not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer