



सत्यमेव जयते

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

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

(Tuesday the 5th day of January, 2021)

APPEAL No.299/2019

Appellant

M/s. Kerala State Cashew Development
Corporation Ltd, Factory No.4
Karimulackal, Mavelikkara
Alappuzha - 690505

By Adv. Vipin P Varghese

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office,
Kaloor, Kochi 682017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on
03.12.2020 and this Tribunal-cum-Labour Court on
05.01.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KCH/1151/Penal Damages/2019/2961 dt. 07/05/2019
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 1/4/1996

to 30/9/2018. The total damages assessed is Rs. 12,12,631/-. The interest demanded U/s 7Q of the Act for the period 6/1998 to 7/2018 is also being challenged in this appeal.

2. Appellant is an undertaking under Government of Kerala and is involved in the business of cashew processing. The Hon'ble High Court of Kerala in W.P.C No.15194/2013 dt.18/07/2016 directed the respondent to return an amount of 53,70,634/- with 12% interest illegally recovered from the bank account of the appellant Corporation in May 2010. The order of the Hon'ble High Court of Kerala was not properly complied by the Assistant PF Commissioner, Kollam. The Hon'ble High Court specifically directed the respondent to adjust the outstanding dues against the recovered amount and return the balance to the appellant with interest at the rate of 12 %. The Hon'ble High Court also directed that no damages need be levied with respect to the demands made, covered by the Writ Petitions. The Assistant PF Commissioner, Kollam issued a compliance statement to the appellant. As per the compliance statement, the

Assistant PF Commissioner, Kollam failed to pay Rs.53,70,634.13 as ordered by the Hon'ble High Court of Kerala. An amount of Rs. 20,11,210/- was transferred to other EPF Offices and Rs. 6,58,484/- was accounted at the recovery cell. The Assistant PF Commissioner, Kollam in violation of the judgment adjusted an amount of Rs.27,00,940/-against penal damages. Hence the appellant filed a Writ Petition No. 10935/2017 before the Hon'ble High Court of Kerala and the Hon'ble High Court has granted an interim order staying the operation of the compliance statement. The Writ Petition is still pending before the Hon'ble High Court. The appellant is going through severe financial crisis due to adverse business climate and non-availability of working capital from government. According to the appellant huge amounts are lying with the respondent against Rs. 53,70,634/- illegally recovered from the appellant.

3. The respondent filed counter denying the above allegation. In **Arcot Textile Mills Ltd Vs RPFC & Others**, (2013) 16 SCC1 the Hon'ble Supreme Court held that " On a scrutiny of Sec 7(I), we notice that the 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 creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an 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 extreme interpretations, it is bound to adversely affect 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 provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put 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.”

In view of the above findings by the Hon'ble Supreme Court no appeal is maintainable against Section 7Q order.

4. The respondent organization at Kollam assessed dues U/s 7A of the Act in respect of the trainees deployed by them. The assessments were quashed by the EPF Appellate Tribunal, New Delhi. The appeal filed before the Hon'ble High Court was also dismissed by the Division Bench of the Hon'ble High Court of Kerala. In the meanwhile the respondent office at Kollam recovered Rs. 53,70,634.13/- from the appellant through recovery. The Hon'ble High Court of Kerala in WPC No. 15194/2013 and 3 connect Writ Petitions, 58561/2015, 26605/2015 and 9613/2016 directed the respondent to return the money recovered from the appellant with interest @ Rs. 12%. The respondent involved in the above Writ Petitions are located at Kannur, Kollam and Irigalakkuda. The Hon'ble High Court also clarified that no damages need be levied with respect of the demands made, covered by the above Writ petitions. The adjusted demanded as per common judgment in WPC No. 15194/2013 was against code number KR/1160-A and

not against the establishment covered under code number 1151, factory number 24 at Karimulackal, the appellant in the present appeal and hence the decision in WPC number 15194/2013 has no relevance in this case. The appellant is trying to include the present assessment also along with the earlier assessments of different establishments to confuse the Tribunal and to take shelter under the same. The financial constraints of the appellant do not absolved him of the liabilities towards his employees. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, AIR 998 SC 688 held that the financial condition of an establishment cannot be a defense for delayed remittance of contribution. The Division Bench of Hon'ble High Court of Karnataka in ***Star Construction and Transport Company Vs State of Mysore***, 1973 LIC 392 held that Sec 14B is of punitive character to deter any establishment for committing a default. The Hon'ble High Court of Kerala in ***Ernakulam District Co-Operative Bank Vs Regional PF Commissioner***, 2000 (1) LLJ 1662 held that there may be sufficient reasons for the

employer for make belated payment, however that is not a ground for granting exemption for paying penalty or damages. The Hon'ble High Court of Gujarat in **CP Kotak Bal Mandir Vs RPFC**, SCA 3749 of 2011 held that mere existence of financial hardship is not sufficient explanation for delay in payment under the Act, unless it is also shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period.

5. The appellant raised two grounds for reduction or waiver of damage. The 1st ground is with regard to the claim of the appellant that huge amounts recovered by the respondent from the appellant is required to be refunded with interest at the rate of 12% as directed by the Hon'ble High Court in W.P.(C) no.15194/2013. According to the learned Counsel for the respondent, the amount of Rs.53,70,634/- along with 12% interest which was directed to be refunded has already been adjusted as per Annexure A4 statement. The Hon'ble High Court of Kerala in W.P.no.15194/2013 has taken note of the fact that various writ petitions considered by it, pertains to

assessment orders made against various units in different parts of the State. W.P.(C)no.16856/2015 challenged the assessment made for the period from 04/2014 to 09/2014 and W.P.(C) no.26605/2015 challenged the assessment made for the period from 10/2014 to 05/2015 by the Assistant Commissioner at Sub Regional Office, Kannur. It also noticed that W.P.(C)no.9613/2016 is with respect to the interest and damages levied by competent authority against the unit at Irinjalakuda with regard to the delay in remittance of contribution. The Hon'ble High Court finally concluded that

“In the above circumstances, it is only proper that the petitioner be granted the amounts due with 12% interest, since the recovery is said to be against the provisions of the EPF Act, which levies an interest @ 12%. The Regional Provident Fund Commissioners or the Authorised Officer, who are the respondents in W.P.(C) nos.16856/2015, 26605/2015 and 9613/2016, shall compute the amounts due as on 30.07.2016 along with the levy of Sec 7Q interest and forward such computation to the Regional

Provident Fund Commissioner, Kollam, the 1st respondent in W.P.(C) no.15194/2013. **It is made clear that no damages need be levied with respect to the demands made, covered by the above writ petitions, since the damages in the nature of a deterrent measure, need not be levied against the petitioner in the peculiar facts arising in the case.** The 1st respondent in W.P.(C) no.15194/2013 shall, on receipt of such computation from the various Regional Provident Fund Commissioners, transfer the amount demanded to the said Regional Provident Fund Commissioners within two weeks from the date of receipt of such computation, including Sec 7Q interest for the period after 30.07.2016 till payment. Any arrears with respect to the factories at Kollam shall also be adjusted from the amounts with due notice to the petitioner-Corporation, which exercise shall also be completed within a period of one month from the date of receipt of a certified copy of this judgment. After adjusting the said amounts, if any amount remains, from the amount of Rs.53,70,634.13 and 12% interest calculated from the date of respective recoveries made, the same

shall also be paid to the petitioner-Corporation. The entire exercise shall be completed within the period specified herein above ”.

6. One of the issue is to be examined is whether the above order of the Hon’ble High Court of Kerala in W.P.(C) no.15194/2013, in anyway, prohibits the respondent from initiating the proceedings which led to the issue of the impugned orders. The Hon’ble High Court of Kerala in the above cited judgment has made it clear that no damages need be levied with respect to the demand made **covered by the above writ petitions.** W.P.nos 16856/2015 and 26605/2015 pertains to assessments made by the Kannur office of Employees Provident Fund Organization. W.P.(C) no.9613/2016 pertains to interest and damages levied by competent authority having jurisdiction over Iringalakuda. W.P. no.15194/2013 is with respect to damages and interest due for the period from 02/2005 to 01/2006 and in respect of KR/TVM/1227, Factory no.9, Kilimanoor of the appellant establishment. The impugned order is issued in respect of the unit covered under KR/KCH/1151 for the

delayed remittance of contribution for period from 01.04.1996 to 30.09.2018. From the above analysis, it is clear that the judgment of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013 will not in any way prohibit the respondent from assessing damages for belated remittance of contribution in respect of the unit covered under KR/KCH/1151. According to the learned Counsel for the appellant, the correctness of the adjustment given by the respondent vide Annexure A4 statement is being considered by the Hon'ble Court in W.P. no.10935/2017 and the matter is pending. However the claim of the appellant that Rs.27,00,940/-is adjusted against damages is apparently not correct as it seen from annexure A4 (8) that the amount was adjusted against interest U/s 7Q of the Act of various units of the appellant in Kollam jurisdiction. In view of the above, the proceedings initiated by the respondent against the unit of the appellant covered under code no.KR/KCH/1151 is legally correct.

7. The only other ground pleaded by the learned Counsel for the appellant in this appeal is with regard to

financial difficulties of the appellant establishment. According to the learned Counsel for the respondent, the appellant failed to produce any records regarding the financial constraints before the respondent authority U/s14B of the Act. The appellant failed to produce any documents in this appeal as well. When financial constraints are pleaded as a reason for the delayed payment, it is upto the appellant to establish the same before the authority U/s 14B of the Act. Having failed to do so, the appellant cannot plead the benefit of financial difficulties for waiver or reduction of damages U/s 14B of the Act. The Hon'ble High Court of Delhi in **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 held that if the appellant failed to produce documents to substantiate the financial constraints and the mitigating circumstances before the 14B authority and also in the appeal, it is not possible to interfere with the findings of the 14B authority.

8. The learned Counsel of the appellant also pointed out that the appellant failed to remit even the employees' share of contribution deducted from the salary

of the employees in time. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in belated remittance of contribution atleast to the extent of employees' share of contribution which amounts to 50% of the total contribution.

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.

10. Considering all the facts, circumstances and pleadings, I am not inclined to interfere with the impugned orders.

Hence the appeal against Sec 14B order is dismissed as there is no merit in the appeal. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer