



सत्यमेव जयते

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

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

(Friday the 30th day of July 2021)

APPEAL No.381/2019

(Old No. ATA 946(7)2015)

Appellant : M/s. Edarikkode Textiles,
Puthuparamba P.O
Edarikkode,
Malappuram- 676 501.

By Adv. V. Krishna Menon

Respondent : The Regional PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on 31.03.2021 and this Tribunal-cum-Labour Court on 30.07.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KK/11662/Enf-3 (1) Damages 2015/2534 dt. 02/07/2015 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 03/2013 to 12/2014. The total damages assessed is Rs. 12,96,795/-. 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 Government of Kerala undertaking working under the Kerala State Textile Corporation Limited. The appellant is engaged in the business of manufacturing and marketing of textile materials. The appellant is covered under the provisions of the Act. There was acute financial crisis of the appellant establishment for the period from 03/2013 to 12/2014. Accordingly there was delay in remittance of provident fund contribution. The delay was due to reasons beyond the control. There was no intentional or deliberate delay in remitting contribution. The respondent issued notice dt. 10/06/2015 proposing to impose damages U/s 14B and interest U/s 7Q of the Act. The appellant submitted a preliminary objection dt. 30/6/2015. Copy of the preliminary objection is produced and marked as Annexure A2. The appellant also attended the hearing and submitted the reasons for delayed remittance of provident fund contribution. The relevant records such as

Balance Sheet and Profit & Loss account was also shown to the respondent authority. Ignoring the contentions of financial difficulties the respondent issued the impugned orders. The appellant is producing the Balance Sheet and Profit & Loss account for the years 2011-2012, 2012-2013, 2013-2014 and 2014-2015 and are marked as Annexure A5 to A8. The respondent authority has not given any reason for imposing such huge damages. The respondent authority failed to exercise the discretion vested on him as per the provisions of Sec 14B of the Act. Since levying penalty is a penal action, the respondent authority ought to have considered the reasons for delayed remittance of contribution. The respondent authority ought to have considered the contentions based on the decision of the Hon'ble High Court of Kerala in ***Regional Provident Fund Commissioner Vs Harrisons Malayalam Ltd***, 2013 (3) KLT 790.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. As such the appellant is required to pay the provident fund contribution as stipulated under Para 38 of

the EPF Scheme within 15 days of close of every month. The appellant was given adequate opportunity before the impugned orders are issued. The contentions of the appellant that they produced documents before the respondent authority to substantiate the claim of financial difficulties is not correct. The respondent authority has categorically stated in the impugned order that no documents were produced by the appellant at the time of 14B hearing. Provident Fund contributions are part of wages of employees and non remittance of contribution under the Act is a violation of fundamental rights of the employees, guaranteed under Article 21 of Constitution. The Hon'ble High Court of Bombay in ***Raliwolf Ltd Vs RPFC and others***, 2001 (1) LLJ 1423 (Bombay HC) held that that non-payment of wages to its employees is violation of the fundamental rights of the employees guaranteed Article 21. Financial difficulties by itself is not a ground for delayed remittance of contribution. It is particular so with regard to the employees' share of contribution deducted from the salary of the employees. In ***Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC***, 1982 KLT 303 the Division Bench of the Hon'ble High Court of Kerala observed that the

employer is liable to pay contribution under the Act irrespective of the fact whether wages are paid or not. In ***Associated industries (Pvt) Ltd Vs RPFC***, 1983 2 LLJ 652 the Hon'ble High Court held that the employers are under legal obligation to deposit the provident fund contribution to the fund within the time prescribed, the movement the Act and Schemes become applicable to the establishments.

4. An order issued under sec 7Q of the Act is not appealable.

5. The respondent authority initiated action for delayed remittance of provident fund contribution for the period from 03/2013 to 12/2014. The respondent authority issued a show cause notice to the appellant along with a delay statement showing the due date of payment, the contribution paid, the actual date of payment and also the delay in remitting contribution. The appellant was also given a personal hearing. A representative of the appellant attended the hearing and submitted Annexure A2 written statement. According to Annexure A2 the delay in remittance of provident fund contribution was due to financial constraints and it was also stated therein that the

accumulated loss of the mill as on 31/03/2014 was Rs. 3096/- lakhs. As verified from the impugned order the appellant failed to produce any document to substantiate the claim of financial difficulties before the respondent authority. The appellant produced the balance sheet and profit and loss account for the years ending 31/03/2012, 31/03/2013, 31/03/2014 and 31/03/2015 in this appeal to substantiate their claim of financial difficulties. It is seen that for the year ending 2011-2012 the revenue income was Rs.11,05,73,229/-. It is also seen that the appellant has spend 3,94,01,866/- towards employees' benefit expenses during the corresponding year. Similarly for the year ending 31/03/2013 the total revenue income was 10,84,42,058/- and the employees benefit expenses was Rs.4,25,68,757/-. For the year ending 31/03/2014 the total revenue income was Rs.8,42,64,116/- and the employees benefit expenses are Rs.4,32,92,270/-. Similarly for the year ending 2015 the total revenue income is Rs.7,55,88,130/- and the employees benefit expenses was Rs.5,03,60,887/-. A company having so much of revenue income and so much of money being spend towards employees benefit expense cannot plead financial difficulties as a reason for delayed remittance of contribution. However, it is seen

that the appellant establishment was running under loss during the relevant period of time. During the year 2012, the loss of the company was Rs.6,02,14,008/-, for the year 2013 the loss was Rs.3,65,71,353/-, for the year 2014 the loss was Rs. 4,74,28,978/- and for the year 2015 the loss was to the tune of Rs.7,37,73,971/-. The learned Counsel for the respondent pointed out that the financial statements produced along with this appeal cannot be relied on to prove the actual financial status of the establishment. The Hon'ble Supreme Court in various decisions has held that the actual financial position of an establishment cannot be decided on the basis of the financial statements unless the current assets and liabilities reflected in the statements are proved before the concerned authority by a competent person. The learned Counsel for the respondent also pointed out that from the documents now produced by the appellant it can be seen that the wages of employees were paid in time and there is no case for the appellant that the wages were delayed. When the wages are paid, the employees' share of provident fund contribution is deducted from the salary of the employees. It is seen from Annexure A1 notice that there was huge delay in remitting the contribution. On an average the delay

is 6-10 months. The appellant was holding or misusing the employees share of contribution deducted from the salary of the employees for such a long period. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed the offence of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of total contribution which was deducted from the salary of the employees.

6. Considering the fact that the appellant establishment is a government of Kerala undertaking and was continuously in loss during the relevant point of time, the appellant is entitled to some relief as far as damages are concerned.

7. Considering all the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70 % of the damages levied under Sec 14B of the Act.

8. The learned Counsel for the respondent pointed out that an appeal against an order issued U/s 7Q of the Act is not

maintainable. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge 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 maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) No.234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **M/s ISD Engineering School Vs EPFO**, W.P.(C) No.5640/2015(D) and also in **St. Marys Convent School Vs APFC**, W.P.(C) No.28924/2016(M) held that the order issued U/s 7Q of the Act is not appealable.

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

(Sd/-)

(V. Vijaya Kumar)
Presiding Officer