



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**
sent: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Wednesday the 23rd day of March, 2022)

APPEAL No.383/2018
(Old No. ATA.340(7) 2014)

Appellant

M/s. Krishna Photo Magic,
Sankarayyar Road Junction,
M.G. Road,
Thrissur ~ 680 004.

By Adv. C.B. Mukundan

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi ~682017.

By Adv. Thomas Mathew Nellimmoottil

This case coming up for final hearing on 16/12/2021
and this Tribunal-cum-Labour Court passed the following on
23/03/2022:

ORDER

Present appeal is filed from order No. KR / KC /
27346 / Damages Cell / 2013 / 14295 dt. 26/12/2013
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 06/2007 to 02/2010.

The total damages assessed is Rs. 2, 60,660/- The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is a partnership firm engaged in photo studio services and other allied activities from October 2006. The appellant establishment was brought under the coverage of the Act in December 2010 with retrospective effect from 01/06/2007. The appellant could not start compliance immediately. In the month of June 2011, the appellant remitted an amount of Rs.2,21,058/- being the employers' share of contribution for the period from 01/06/2007 to 28/02/2009. The appellant also submitted an application for waiver of employees' share for pre-discovery from 01/06/2007 to 30/11/2010. Thereafter the respondent waived the employees' share of contribution for the above period. The respondent issued a notice dt.11/09/2013 proposing to levy damages and interest alleging delay in payment of dues made for pre- discovery period. The appellant was also offered an opportunity for personal hearing on 08/10/2013. During the hearing the representative of the appellant brought to the notice of the respondent that the administrative instructions issued by the Head Office of the

respondent directed that employees' share of contribution for pre-discovery period can be waived. It was also pointed out that as per the instructions, damages and interest cannot be claimed for pre-discovery period. Without considering the submissions of the appellant, the respondent issued the impugned orders which are produced and marked as Annexure A1 and A2 respectively. The dispute is only with regard to damages and interest for pre-discovery period that is from 06/2007 to 02/2010. The respondent failed to consider the request of the appellant to waive damages as per circular Nos. 15921 dt. 17/01/2006 and 11025 (2587 SS) dt. 06/08/2009 stating that no damages and interest need be levied for pre-discovery period. The respondent also failed to consider the financial difficulty of the appellant while quantifying the damages. As per the balance sheet it can be seen that the appellant establishment was running under heavy loss. Damages cannot be levied unless there is willful defiance of law and contumacious conduct on the part of an employer.

3. The respondent filed counter denying the above allegations. There was delay in remittance of contribution from the period from 06/2007 to 02/2010. Belated remittance of contribution will attract damages U/s 14B and interest U/s 7Q.

The respondent therefore initiated action for assessing damages vide notice dt. 11/09/2013. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing. The representative of the appellant admitted the delay in remittance of provident fund dues and also stated that the dues were not collected from employees and requested to waive the same. The representative did not raise any dispute regarding the amount and date of remittance shown in the delay statement forwarded along with the notice. The respondent authority therefore issued orders assessing damages and interest.

4. The interest demanded U/s 7Q of the Act is not appealable U/s 7(I) and therefore the appeal against 7Q order is not maintainable. The damages for the period where there is no delay has been excluded and damages is levied only for the admitted delay for the period from 06/2007 to 02/2010. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30 and 38 of EPF Scheme, to remit monthly contribution payable under various accounts invariably within 15 days of close of every month in respect of all eligible employees. The Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 held that 'the pragmatics of the

situation is that if the stream of the contribution is frozen by employers defaults after, due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the fund, public frustration from the failure of the project, and psychic demoralization of the miserable beneficiaries'. "Damages" have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act. The appellant claimed that the damages levied U/s 14B also includes interest U/s 7Q as per circular No. PG Cell / 3(3)P6 / Dam dt. 29/05/1990 issued by the respondent organization. It is pointed out that the Scheme was amended with effect from 01/09/1991 and therefore the above said circular has no relevance.

5. The impugned order U/s 14B is issued for belated remittance of contribution for the period from 06/2007 to 02/2010. According to the learned Counsel for the appellant, the appellant establishment was covered with effect from

01/06/2007 in December 2010. The appellant therefore requested for the waiver of employees' share of contribution for the period 01/06/2007 to 30/11/2010. The respondent authority waived the employees' share of contribution for the above said period. However Para 14 of the written statement filed by the respondent is that " It is submitted that the total amount of contribution payable in terms Section 6 of the Act includes employers share as well as employees' share of contribution. Approximately 50% of the contribution payable by the employer represents employees' share of provident fund contribution, ie. the monthly contribution actually deducted from the salary of the beneficiary employees. The appellant cannot attribute any financial difficult for not remitting the same regularly every month within the time stipulated under Para 30 & 38 of EPF Scheme. The details as per the damages statement confirms that the employees' share of contribution was not remitted promptly by the appellant". It is therefore not clear from the impugned order as well as from the written statement filed by the respondent whether the employees' share of contribution for the period from 01/06/2007 to 31/11/2010 is actually waived by the respondent, as claimed by the appellant in the appeal memorandum. According to the learned Counsel for the appellant,

the employees' share of contribution for the period from 01/06/2007 is also included in the belated remittance of contribution while issuing the impugned order. The impugned order as well as the reply statement filed by the respondent are completely silent about the retrospective coverage and waiver of employees' share of contribution.

6. Further it is seen that the appellant had claim the benefit of circular Nos. 15921 dt.17/01/2006 and 11025 (2587) SS dt. 06/08/2009, on the ground that, as per these circulars, damages and interest cannot be levied for pre-discovery period. The respondent in their written statement at Para 16 is referring to circular dt. 29/05/1990, according to which the interest U/s 7Q is included in Sec 14B of the Act. Hence it is clear that the respondent is not responding to the plea of the appellant.

7. It is clear from the above findings that the impugned order is issued without proper application of mind. The written statement filed by the respondent also does not answer any of the issues raised by the appellant in the appeal memorandum. Hence I find it extremely difficult to take a final decision regarding the liability of the appellant to pay damages and interest. In the normal course, an order issued U/s 7Q is not appealable U/s 7(I)

of the Act. However in the peculiar circumstances and facts of this case both the Annexure A1 and A2 orders are set aside, with a direction to the respondent to re-examine the whole matter in the light of the contentions taken by the appellant .

Hence the appeal is allowed, the impugned orders are set aside and the matter is remitted back to the respondent authority to re-assess the damages and interest after taking into account all the grounds pleaded by the appellant in this appeal. The assessment shall be done within a period of 6 month after issuing a notice to the appellant. If the appellant fails to appear or produce records called for, the respondent is at liberty to quantify the damages and interest according to law.

Sd/~

(V. Vijaya Kumar)
Presiding Officer