



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

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

(Monday the 21st day of March, 2022)

Appeal Nos.429/2019 (Old No. ATA 188(7)/2016)
67/2021 & 68/2021

Appellant : The Trichur Co-operative Spinning
Mills Ltd.,
Vazhani P.O,
Trichur – 680 589

By Adv. B.S. Krishnan Associates

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi – 682017

By Adv. Thomas Mathew Nellimmoottil

This case coming up for final hearing on
29/12/2021 and this Tribunal-cum-Labour Court on
21/03/2022 passed the following:

ORDER

Appeal No. 429/2019 is filed from order No. KR /
KCH/ 13073 / Damages Cell / 2015 / 14762 dt. 30/12/2015
assessing damages U/s 14B of EPF & MP Act (hereinafter
referred as ‘the Act’) for belated remittance of contribution for
the period 02/2010 to 01/2013. Total Rs.6,68,980/-. The

interest demanded U/s 7A of the Act for the same period is being challenged in this appeal.

2. **Appeal No. 67/2021** is filed from order No. KR / KCH / 13073 / Damages Cell / 2015 /14763 dt. 30/12/2015 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 04/2003 to 12/2009. The total damages assessed is Rs. 20,96,618/-.

3. **Appeal No. 68/2021** is filed from order No. KR/ KCH / 13073 / Damages Cell / Ex parte /SPL/2015/1594 dt. 15/12/2015 assessing damages U/s 14 B of the Act for belated remittance of contribution for the period from 02/2013 to 09/2014. The total damages assessed is Rs. 6442/-.

4. Since common issues are raised, all the appeals are heard and disposed by a common order.

5. The appellant establishment is a unit in the co-operative sector working with the support of Government of Kerala and engaged in the manufacturing of cotton and synthetic yarn. The appellant establishment is covered under the provisions of the Act. The appellant was regular in compliance till 2003. The respondent authority issued summons directing

the appellant to show cause why damages shall not be levied for belated remittance of contribution. The respondent also enclosed a detail statement of monthwise delay. The respondent did not disclose in respect of which period they scrutinized the records of remittance by the appellant. The appellant sent a letter dt. 09/04/2014 pointing out that due to very high raw material cost and sluggish yarn market , the appellant was loosing more than Rs. 30 lakhs per month and that the fund was not sufficient to meet even the unavoidable payments like salary of the employees and electricity bills. Without taking into account the representation made by the appellant the respondent authority issued orders assessing damages and a separate order towards interest. The impugned orders are produced and marked as Annexure 3 and Annexure 4 respectively. The delay in remittance of contribution was not intentional and therefore the respondent ought to have assessed only compensatory damages.

6. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. Present appeal is filed challenging different orders for different periods assessing damages and

interest. As per Rule 10 of the appellant (Procedure) Rule 1997 an appeal shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. In view of the above, the appeal filed by the appellant is not maintainable under Rule 10 of EPF Appellate Tribunal (Procedure Rules 1997) and is therefore liable to be dismissed.

7. An appeal against an order issued U/s 7Q of the Act is not maintainable as there is no provision to challenge Sec 7Q order U/s 7(I) of the Act.

8. The appellant is a chronic defaulter in remittance of contribution. There were four earlier instances when damages and interest were levied and recovered for belated remittance for contribution. The damages statement was issued to the appellant in detail, for the period 02/2010 to 01/2013 and the therefore the damages and interest were levied for the said period. A representative of the appellant attended the hearing and pleaded financial difficulties. The appellant did not produce any records to substantiate his claim. The appellant failed to prove that there was delay in payment of wages to the employees due to non-availability of funds. The appellant also

failed to establish that the appellant failed to remit other governmental dues. Hence the delay in remittance of contribution was deliberate. Financial crisis is not a reason for imposing damages and interest. In **Hindustan Times Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that bad financial condition is no defense for delayed deposit of contribution. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC 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 the financial position of the establishment over different points of time. Besides 50% of the contributions deposited late represented the employees’ share which had been deducted from the employees’ wages and was a trust money with employer for deposit in the statutory fund. The delay in the deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration for relief.”

9. In the proceedings for assessment of damages for 03/2013 to 09/2014 though notice was served on the

appellant nobody appear in the enquiry and there was no request seeking adjournment.

10. The appellant failed to file any written statement as well before the respondent authority. The appellant failed to produce any document before the respondent authority to substantiate their claim of financial difficulties. The appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. Appellant is a chronic defaulter from the very beginning and damages were levied and recovered from the appellant for delayed remittance of contribution from 1994-95 onwards.

11. The appellant establishment delayed remittance of contribution. The EPF and MP Act and the Schemes there under mandated the contribution to be paid within 15 days of close of the month in which the employee earned his salary/wages. There was delay in remittance of provident fund by the appellant. The respondent authority, therefore, initiated three separate proceedings for assessing damages U/s 14B of the Act read with Para 32A of EPF Scheme and also interest U/s 7Q. Six separate orders were issued by the respondent authority assessing damages and interest for different periods. The

appellant filed Appeal No. 429 of 2019 challenging all the orders. The learned Counsel for the respondent raised an objection that as per Rule 10 of EPF Appellate Tribunal (Procedure) Rules, 10 the appeal is not maintainable. As per Rule 10 “ An appeal shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.” The learned Counsel for the appellant pleaded for splitting the appeal into separate appeals so that the defect in filing a common appeal can be cured. After hearing the Counsels, the appellant was allowed to split the appeals.

12. The learned Counsel for the respondent further pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act .

13. 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. 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.

14. The learned Counsel for the appellant argued that there was some confusion and lack of clarity with regard to the summons issued by the respondent authority in respect of the impugned order issued in Appeal No.429/2019. The learned Counsel for the respondent pointed out that there was no confusion with regard to the notice as the delay statement was issued for the delayed remittance for the period 02/2010 to 01/2013 and the impugned order is also issued for the same period. Further he also appointed out that the appellant is provided an opportunity for hearing, a representative of the appellant attended the hearing and he never raised any doubt regarding the statement and only pleaded financial constrains as a reason for delayed remittance of contribution. In Appeal No. 67/2021 a representative of the appellant attended the hearing and pleaded financial difficulties. However no

documents were produced, though in the written submission made by the appellant, it was indicated that the Balance Sheet for 2007-2008 and 2008-2009 are produced alongwith the submission. With regard to the Appeal No. 68/2021 the claim of the appellant is that the impugned order was issued without hearing the appellant. According to the learned Counsel for the respondent, summons was issued to the appellant and the same was acknowledged by the appellant establishment. However nobody attended the hearing there was no request for adjournment and there was no written submission filed by the appellant establishment. The respondent authority felt that since the amount involved is very small the appellant is not interest in pursuing the matter and admitted the liability.

15. The only ground pleaded by the learned Counsel for the appellant is that of financial difficulty. However the appellant failed to produce any documents either before the respondent authority or in this appeal to substantiate their claim of financial difficulty. In the written statement filed the Appeal No 67 of 2021, the appellant establishment stated that there was a net loss of Rs. 461 lakhs for the year 2013-2014 and average loss per month is 38.5 lakhs. In the absence of any

documents to substantiate their claim, it is not possible to accept the ground of financial problems for delayed remittance of contribution.

16. 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.

17. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in **Regional PF Commissioner Vs Harrison Malayalam Ltd**, Writ Appeal No.241/2012 and the **Standard Furniture Vs The Registrar EPF**

Appellate Tribunal and Others, Writ Appeal No. 996/2015 to argue that the financial constrains can be considered while deciding the quantum of damages. However in the absence of any evidence to support the claim, it is not possible to accept the claim of the appellant.

18. The learned Counsel for the appellant also pleaded that there was no intentional delay in remittance of contribution. He relied on the decision of the Hon'ble Supreme Court in **Mcleod Russel India Ltd Vs RPFC**, Civil Appeal No. 5927/2014 and **Assistant Provident Fund Commissioner Vs The Management of RSL Textile India Ltd**, Civil Appeal No. 96-97 of 2017 to argue that mensrea is a relevant consideration while deciding the quantum of damages U/s 14B of the Act.

19. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of india Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

20. The learned Counsel for the respondent argued that there is no proof regarding the claim that there is delay in payment of wages to its employees. When the wages are paid the employees' share of the contribution is deducted from the salary of the employees. According to the Counsel, the appellant even fail to remit the employees' share of contribution deducted from the salary of the employees which is an offense of breach of trust U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of Trust the appellant cannot

plead that there is no intentional delay, atleast to the extent of 50 % of the total contribution.

21. The learned Counsel for the appellant pointed out that the appellant establishment is co-operative spinning mill under government of Kerala and the delay in remittance of contribution was only due to the financial constrains. Though the financial difficulties claimed by the appellant is not proved before the respondent authority as well as in this appeal, I am of the considered view that interest of justice will be met, if the appellant is directed to remit 80% of the damages assessed as per the impugned orders.

Hence the appeals are partially allowed, the impugned orders U/s 14B are modified and the appellant is directed to remit 80% of damages. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer