



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

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

Friday the 05th day of February, 2021)

APPEAL No.431/2019

(Old No. ATA No.503 (7)2016)

Appellant

M/s. Unique Patterns & Foundry (P) Ltd.,
Industrial Estate,
Mayithara P.O
Cherthala - 688539

By Adv. Sankarankutty Nair

Respondent

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

By Adv. Sajeev Kumar K.Gopal

This case coming up for final hearing on
18/01/2021 and this Tribunal-cum-Labour Court on
05/02/2021 passed the following:

ORDER

Present appeal is filed from Order No. KR / KCH /
13582 / Damages Cell / PJT / 2015 / 401 dt. 8/3/2016
assessing damages U/s 14 B of EPF & MP Act, 1952
(hereinafter referred to as 'the Act') for belated remittance of

contribution for the period 4/1995 to 11/2001. The total damages assessed is Rs.2,92,654/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant establishment is a factory allotted by the Kerala State Small Industries Corporation. The Management closed its business in May 2002. The appellant purchased the shares of the company from the share holders and Directors on 10/7/2006, as per the provision of the Indian Company's Act. The appellant took over the management in 2006 only and he has no manner of connection in respect of the transactions prior to 2006. Hence appellant is not bound to maintain the records relating to provident fund payment during the relevant point of time. The respondent issued a notice U/s 14B along with its Annexure. In Annexure, damages and interest were claimed. The appellant appeared in the enquiry and informed the respondent that the appellant was not responsible for the delay, if any. The appellant challenged the claim also on the ground of delay as the appellant has not committed any default or negligence in payment of provident fund contribution. The written statement filed by the appellant

before the respondent is produced and marked as Annexure A2. Without considering the Annexure A2 statement, the respondent issued the impugned order. If at all there is claim for damages and interest it should have been raised within a reasonable time. In this case, the proceedings for assessing damages was initiating after 19 years. Unreasonable delay would, not only amount to abuse of power but also vitiate the validity of action. The impugned orders are issued without relevant records and it can only be on the basis of mere assumptions. There is no mensrea on the part of the appellant in delayed remittance of contribution as the appellant took over the management of the establishment only in 2006.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provision of the Act. The appellant defaulted in payment of contribution for the period from 4/1995 to 11/2001. The delay in remittance of contribution will attract penal damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 19/5/2014 was issued to the appellant along with the details of the delay in remittance of contribution. The appellant was also given an opportunity for personal hearing. A

representative of the appellant appeared in the enquiry and submitted Annexure A2 written statement which was taken on record. The appellant has taken a view that the appellant purchased the shares of the company only on 10/7/2006. The business of the establishment was closed in May 2002 and they became owners only in July 2006. It was also pleaded that the present Directors cannot be held liable for the dues of the previous Directors. Annexure A4 proceedings issued U/s 7Q of the Act is not appealable as there is no provision for challenging the order U/s 7(I) of the Act. The main contentions of the appellant is that the establishment was under the control and supervision of Sri Paul Varghese and Sunil Das Abi during the relevant point of time and therefore the appellant cannot be held liable for the belated remittance of contribution for the relevant point of time. U/s 17B of the Act, the transferee would be liable for the penal damages levied U/s 14B of the Act jointly and severally in respect of the delay committed prior to the date of transfer. Another contention raised by the appellant is with regard to the delay in initiating the process U/s 14B of the Act. There is no limitation provided U/s 14B and therefore the appellant cannot dispute the claim

of the respondent on the ground of limitation. In ***Organo Chemicals Industries Vs Union of India***, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the imposition of damages U/s 14B is punitive as well as reformatory. The predominant objective of the provision is to penalize the employer for the default committed in remitting provident fund contribution in time.

4. The appellant raised 3 issues challenging the impugned order in this appeal. The first issue is with regard to the fact that the appellant has taken over the appellant establishment only in 2006 and they are not liable to pay damages for the period when the appellant establishment was under a different management. This objection is strongly objected to the respondent on the ground of Sec 17B of the Act. According to Sec 17B "Liability in case of transfer of establishment :- Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner what so ever, the employer and the persons to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the

employer under any provisions of this Act or the scheme or the pension scheme or insurance scheme as the case may be, in respect of the period up to the date of such transfer.

Provided that the liability of transferee shall be limited to the value of assets obtained by him by such transfer”.

5. The Hon’ble Supreme Court considered the liability of the transferee in ***Mcleod Russel India Ltd Vs RPFC***, 2014 KHC 4433. In the above case the Hon’ble Supreme Court was considering the liability of the transferee to pay damages U/s 14B of the Act. The Hon’ble Supreme Court held that Para 11.

“ It has also been argued that damages as postulated in Sec 14B would not be transferable U/s 17B. This argument has to be stated only to be rejected for the reasons that sections 17B specifically speaks off “ The contributions and other sums due from the employer under any provisions of this Act or the Scheme (Emphasis added). The proviso to Sec 17B indeed clarifies the position in as much as it restricts and / or limits the liability of the transferee up to the date of transfer to the value of the assets obtained by him through such transfer.”

From the above decision and also Sec 17B of the Act it is very clear that the appellant as transferee is liable to remit the damages under 14B of the Act, but limited to the value of assets obtained by him through such transfer.

6. Another issue raised by the appellant is with regard to the delay in initiating the proceedings U/s 14 B of the Act. The learned Counsel for the respondent argued that there is no limitation provided under the Act for initiating any proceedings U/s 14B and the delay cannot be a valid ground for interfering the impugned orders. The Hon'ble Supreme Court of India in ***Hindustan Times Limited Vs Union of India*** 1998 (2) SCC 242 examined this issue in detail. The Hon'ble Supreme Court held that

“ There is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14 B would be taken ; mere delay in initiating action under Section 14B cannot amount to

prejudice in as much as the delay on the part of the Department , would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. Hon'ble Apex Court has further observed that in fact, in cases under Section 14B if the Regional Provident Fund Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for his own purposes or for his business. In our opinion, it does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers under Section 14B, he has suffered loss. On the other hand, the defaulter has obviously had the benefit of the "boon of delay" which is so dear to debtors."

In view of the above finding by the Hon'ble Supreme Court the claim of delay taken by the appellant cannot be considered for interfering the impugned order.

7. The third issue raised by the appellant is with regard to mensrea in delayed remittance of contribution. It is seen that the appellant establishment was run by a different

management and was closed in the year 2002. The present management took over the appellant establishment only in 2006. Hence it is not possible to allege any intentional delay on the part of the appellant in delayed remittance of contribution. Though the Hon'ble Supreme Court refused to interfere in the assessment order U/s 14B in the case of **Mcleod Russel India Ltd** (supra), it made an observation that when the damages are levied, it is presumed that there is mensrea in belated remittance of contribution. This decision was subsequently followed by the Hon'ble Supreme Court in **Assistant PF Commissioner Vs Management of RSL Textiles Ltd**, 2017 KHC 6030. Considering the facts and circumstances of this case, it is not possible to allege any intentional delay against the appellant. However on a perusal of the delay statement in Annexure A1, it is seen that the delay in remittance varies from few days to almost 7 years. The loss to the fund cannot be compensated by the interest levied U/s 7Q alone. Hence the part of the loss shall be compensated by the appellant which is a statutory responsibility cast upon him as discussed above.

8. The learned Counsel for the respondent pointed out that no appeal is maintainable against 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 U/s 7(I) from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, Civil Appeal No. 9488/2013 the Hon'ble Supreme Court held that no appeal is provided for against imposition of interest at stipulated rate U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, WPC No. 234/2012 the Hon'ble High Court of Kerala also held that no appeal is maintainable against the 7Q order.

9. 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 60 % of the damages levied under Sec 14B of the Act.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 60 % of the damages assessed U/s 14B of the Act. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer